

MEMORANDUM

To: City Council and City Manager

From: Town Attorney

Date: 29 November 2021

Re: SL 2021-138 Compliance – Oak Ridge Code of Ordinances

The General Assembly adopted Session Law (SL) 2021-138, which requires in pertinent part that criminalization of local ordinance violations appear expressly within such ordinances and that also prohibits criminalization altogether in certain enumerated instances. The pertinent language of the session law, which is attached, appears in this omnibus legislation on pages 12-13, highlighted, and reads:

“(b) ~~Unless the Council shall otherwise provide, Except for the types of ordinances listed in subsection (b1) of this section,~~ violation of a city ordinance ~~is~~ may be a misdemeanor or infraction as provided by ~~G.S. 14-4. G.S. 14-4 only if the city specifies such in the ordinance.~~”

The compliance deadline (effective date) for these pertinent provisions of the session law is 1 December 2021. This means that noncompliant local ordinances, while not invalidated generally, cannot be enforced with misdemeanor criminal prosecutions against violations occurring after that date.

I have reviewed the Oak Ridge ordinances (general, and land-development) for compliance with SL 2021-138 and report as follows. Note, that omitted chapters do not contain any applicable enforcement or criminal-remedy provisions.

Chapter 6 – Animal control ordinance.

Chapter 6 is a comprehensive set of provisions constituting the Town’s “animal control ordinance,” and outlawed behavior therein is criminalized in the “Penalties” section, Sec. 6-27(1). I read the statutory change facially and do not construe this to mean that *every* section of every ordinance that outlaws a given

action or omission must state that such is a misdemeanor, *if* there is a comprehensive criminalization provision as indicated.

Chapter 18 – Emergency management.

Sec. 18-15(d) states: “(d) A violation of this section shall be punishable as provided by G.S. 14-288.8.7.” This appears to be an erroneous cross-reference to G.S. 14-288.8, “Manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of weapon of mass death and destruction; exceptions” and its Subsec. (d), providing “(d) Any person who violates any provision of this section is guilty of a Class F felony.” I think this is an improvident local provision, since a municipality to my knowledge cannot make a local violation a felony. I recommend deleting this subsection altogether and adding a section (d) to Sec. 18-1, to provide that any violation of this chapter shall constitute a misdemeanor punishable pursuant to GS 14-4. This misdemeanor criminalization would help local law enforcement to enforce these provisions, if such an emergency occurred.

Chapter 30 – Land development. (“Oak Ridge Development Chapter”)

This chapter was enacted pursuant to former Article 19 of Chapter 160A of the General Statutes, now recodified by Chapter 160D and re-enacted by localities including Oak Rodge by or before 1 July 2021.

SL 2021-138 prohibits criminalization of any ordinance provisions adopted pursuant thereto, with the exception of unsafe building violations, by the following session law provision: “(b1) No ordinance of the following types may impose a criminal penalty: (1) Any ordinance adopted under Article 19 of this Chapter, Planning and Regulation of Development, or its successor, Chapter 160D of the General Statutes, except for those ordinances related to unsafe buildings.”

Therefore, the current provision in Sec. 30-254 “Remedies for violations” and applicable to the enforcement of “the provisions of this chapter” (the Town’s comprehensive development ordinance, i.e. the chapter and all its provisions) is over-broad and violates the new law, where in Subsection (7) it provides “(7) *Criminal penalties.* Any violation of this chapter shall be a misdemeanor or infraction as provided by G.S. 14-4, subject to a maximum fine of \$500.00, and may be prosecuted in the the (sic) appropriate division of the general court of justice.” (My emphasis.) In my opinion, this language is compliant as written. In

order to maintain at least the ability to deal criminally with unsafe building conditions, I recommend modifying the current provision so that this subsection reads: “Any violation of this chapter pertaining to unsafe building conditions shall be a misdemeanor or infraction as provided by G.S. 14-4, subject to a maximum fine of \$500.00, and may be prosecuted in the appropriate division of the general court of justice.”

A more localized enforcement provision within Chapter 30, applicable to Art. X “Environmental regulations,” and specifically Div. 4 “Illicit and Illegal Discharges”, is Sec. 30-1300(6) which provides: “(6) *Criminal penalties.* Any violation of this *chapter* shall be a misdemeanor or infraction as provided by G.S. 14-4. Each violation shall be subject to a fine not to exceed \$500.00.” (<y emphasis.) I think this provision including the section’s lead-in sentence was improvidently drafted to begin with, in that in each instance it purports to apply to the entire development ordinance (chapter) but was certainly intended to apply just to this division (regulating illicit and illegal discharges of pollutants into local waters. To come into compliance with SL 2021-138, I recommend repealing this Subsection 30-1300(6) and changing the word “chapter” to “division” in the section’s lead-in section so that it reads: “Any or all of the following procedures may be used to enforce the provisions of this ~~chapter~~ division.”

Chapter 36 – Parks and recreation.

Sec. 36-62 of Art. 111 of this ordinance, “Sex Offenders In Parks And Recreational Facilities,” provides: “Violation of this article shall be punishable by a fine of \$500.00 and/or incarceration for up to 30 days. Given the new requirement, the implicit reference to GS 14-4 should be made express, and I recommend rewriting this to read: “Violation of this article shall constitute a misdemeanor pursuant to G.S. 1404 punishable by a fine of \$500.00 and/or incarceration for up to 30 days.”

Chapter 38 – Offenses and Miscellaneous Provisions:

Art II --Noise ordinance. Sec. 38-31 “Annoying and disturbing noises” subsection (c)(5) provides: “(5) Violators may also be prosecuted under the provisions of G.S. 14-4 for a misdemeanor criminal offense punishable by a fine of not more than \$500.00 and/or imprisonment as designated for a class 3 misdemeanor.” This is compliant as written.

Chapter 42 – Traffic and Motor vehicles.

Art. II parking restrictions/fire lane regulation by this ordinance is already expressly decriminalized by Sec. 42-45(a), which provides “(a)A violation listed in section 42-42 shall not constitute a misdemeanor or infraction punishable under G.S. 14-4, but instead shall be assessed a civil penalty as fixed by section 42-46 of this division and the civil remedies provided by G.S. 160A-175.”

Art IV Roadway solicitation is criminalized by the following provision of Sec. 42-71: “(c) Any person adjudged in violation of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$50.00, or imprisoned for not more than seven days.” Given the new requirement, the implicit reference to GS 14-4 should be made express, and I recommend rewriting this to read: “(c) Any person adjudged in violation of this section shall be guilty of a misdemeanor pursuant to G.S. 14-4 and upon conviction shall be fined not more than \$50.00, or imprisoned for not more than seven days.”

Chapter 46 – Utilities.

Art II - Water system ordinance: Sec. 46-29(c) provides: “(c) *Destruction of system prohibited.* The malicious, willful, or negligent breaking, damaging, destroying, uncovering, defacing of or tampering with any structure, appurtenance or equipment which is a part of the system is prohibited. Any person convicted of violating this subsection shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in the amount not exceeding \$500.00 for each violation.” Given the new requirement, the implicit reference to GS 14-4 should be made express, and I recommend rewriting this to read: “(c) *Destruction of system prohibited.* The malicious, willful, or negligent breaking, damaging, destroying, uncovering, defacing of or tampering with any structure, appurtenance or equipment which is a part of the system is prohibited. Any person convicted of violating this subsection shall be guilty of a misdemeanor pursuant to G.S. 14-4, and upon conviction thereof shall be fined in the amount not exceeding \$500.00 for each violation.”

Update to Memo January 28th 2022.

Sean Taylor

Planning Director

Town of Oak Ridge

A public hearing before the Planning and Zoning Board for the Town of Oak Ridge concerning the *SL 2021-138 Compliance – Oak Ridge Code of Ordinances text amendment* was held on January 27th, 2022. No persons spoke for or in opposition to the proposed text amendment. After the public hearing was closed planning and zoning board members after much discussion determined that questions and concerns about the proposed text amendment and would like to have the Town Attorney present at the next P&Z stated meeting to address those concerns. Board member Jason Streck made a motion to continue the proposed text amendment until the next meeting of the P&Z Board. Motion was seconded by board member Patti Paslaru. A roll call vote was held and the motion was approved 5-1.

After having a public hearing at the Town Council Meeting on February 3rd, 2022 the Council can do three things:

1. Approve the Text Amendment
2. Disapprove the Text Amendment
3. Continue the Text Amendment until the next regular stated council meeting.
(Since public hearings for the Text Amendments will have occurred no further advertisement or hearing will need to occur)

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

**SESSION LAW 2021-138
SENATE BILL 300**

AN ACT TO INCREASE PROTECTIONS, TRAINING, AND OVERSIGHT FOR STATE AND LOCAL LAW ENFORCEMENT OFFICERS; TO CREATE A DECERTIFICATION DATABASE; TO REQUIRE USE OF THE FEDERAL BUREAU OF INVESTIGATION'S NEXT GENERATION IDENTIFICATION SYSTEM AND RAP BACK SERVICE FOR LAW ENFORCEMENT; TO REQUIRE REPORTING RELATED TO GIGLIO MATERIAL; TO EXPAND TRANSPORTATION OF INVOLUNTARY COMMITMENT RESPONDENTS; TO STANDARDIZE LAW ENFORCEMENT OFFICER ENTRY REQUIREMENTS AND ONGOING REQUIREMENTS; TO REQUIRE PSYCHOLOGICAL SCREENINGS OF LAW ENFORCEMENT OFFICERS PRIOR TO CERTIFICATION OR EMPLOYMENT; TO EDUCATE LAW ENFORCEMENT OFFICERS ON MAINTAINING GOOD MENTAL HEALTH, AND TO PROVIDE INFORMATION TO LAW ENFORCEMENT OFFICERS ON MENTAL HEALTH RESOURCES AVAILABLE; TO CREATE A PHYSICAL FITNESS STUDY; TO DECRIMINALIZE CERTAIN LOCAL ORDINANCES AND PROVIDE COMPLIANCE AS A DEFENSE TO AN ORDINANCE VIOLATION; TO MANDATE MISDEMEANOR FIRST APPEARANCES WHEN A DEFENDANT IS IN CUSTODY; TO REQUIRE USE OF THE NATIONAL DECERTIFICATION INDEX MAINTAINED BY THE INTERNATIONAL ASSOCIATION OF DIRECTORS OF LAW ENFORCEMENT STANDARDS AND TRAINING IN THE CERTIFICATION PROCESS FOR CERTIFIED PERSONNEL; TO ESTABLISH A DUTY FOR LAW ENFORCEMENT OFFICERS TO INTERVENE IN AND REPORT EXCESSIVE USE OF FORCE; TO ADDRESS CONSTITUTIONAL ISSUES WITH SATELLITE-BASED MONITORING RAISED IN STATE VERSUS GRADY AND CREATE A PROCESS TO REVIEW WHETHER OFFENDERS SUBJECT TO THAT CASE WHICH WERE REMOVED FROM SATELLITE-BASED MONITORING ARE OTHERWISE ELIGIBLE; TO REMOVE THE STANDARDS COMMISSIONS FROM A NONEXCLUSIVE LIST OF STATE AGENCY LICENSING BOARDS; TO PROTECT LAW ENFORCEMENT OFFICERS; TO AMEND THE LAW TO PROVIDE IMMEDIATE DISCLOSURE OF BODY-WORN CAMERA RECORDINGS RELATED TO DEATH OR SERIOUS BODILY INJURY; AND TO ESTABLISH THE BIPARTISAN NORTH CAROLINA LEGISLATIVE WORKING GROUP TO MAKE RECOMMENDATIONS FOR THE RECODIFICATION OF NORTH CAROLINA'S CRIMINAL LAWS.

The General Assembly of North Carolina enacts:

PART I. DECERTIFICATION STATEWIDE DATABASE AND PUBLIC LAW ENFORCEMENT DATABASE REGULATIONS

SECTION 1.(a) Article 1 of Chapter 17C of the General Statutes is amended by adding a new section to read:

"§ 17C-14. Database of law enforcement officer certification suspensions and revocations.

The Commission shall develop and maintain a statewide database accessible to the public on its website that contains all revocations and suspensions of law enforcement officer certifications by the Commission."

SECTION 1.(b) Chapter 17E of the General Statutes is amended by adding a new section to read:

"§ 17E-14. Database of justice officer certification suspensions and revocations.

The Commission shall develop and maintain a statewide database accessible to the public on its website that contains all revocations and suspensions of justice officer certifications by the Commission."

SECTION 1.(c) This section becomes effective October 1, 2021.

PART II. REQUIRE USE OF THE FEDERAL BUREAU OF INVESTIGATION'S NEXT GENERATION IDENTIFICATION (NGI) SYSTEM AND RAP BACK SERVICE

SECTION 2.(a) Article 13 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-972.1. Criminal record checks for North Carolina Criminal Justice Education and Training Standards Commission and North Carolina Sheriffs' Education and Training Standards Commission; fingerprints sent to Federal Bureau of Investigation.

(a) The State Bureau of Investigation (SBI) shall provide to the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission the criminal history of any person who applies for certification or is certified, as a criminal justice officer or justice officer, from the State and National Repositories of Criminal Histories. Each agency employing certified criminal justice officers or justice officers shall provide to the SBI, the fingerprints of any person who applies for certification and certified officers, other identifying information required by the State and National Repositories, and any additional information required by the SBI.

(b) The SBI shall conduct a criminal history records check using the fingerprints of the applicants and certified officers, in accordance with 12 NCAC 09B. 0103 and 12 NCAC 10B. 0302, and enroll the fingerprints in the Statewide Automated Fingerprint Identification System (SAFIS).

(c) In addition to searching the State's criminal history record file, the SBI shall forward a set of fingerprints to the Federal Bureau of Investigation (FBI) for a national criminal history record check. The SBI shall enroll each individual whose fingerprints are received under this section in the Federal Bureau of Investigation's Next Generation Identification (NGI) System and Criminal Justice Record of Arrest and Prosecution Background (Rap Back) Service. The SBI will also notify the certifying Commission of any subsequent arrest of an individual identified through the Rap Back Service.

(d) Within 15 business days of receiving notification by either Commission that the individual whose fingerprints have been stored in the State Automated Fingerprint Identification System (SAFIS) pursuant to subsection (b) of this section has withdrawn the application or separated from employment and an Affidavit of Separation has been filed with either Commission, the SBI shall remove the individual's fingerprints from SAFIS and forward a request to the FBI to remove the fingerprints from the NGI System and the Criminal Justice Rap Back Service.

(e) The Commissions shall keep all information obtained pursuant to this section confidential."

SECTION 2.(b) No later than June 30, 2023, all personnel certified by either Commission shall have their fingerprints electronically submitted to the SBI for a state and national criminal history check.

SECTION 2.(c) This section becomes effective January 1, 2023.

PART III. CRITICAL INCIDENT STATEWIDE DATABASE

SECTION 3.(a) G.S. 17C-2 reads as rewritten:

"§ 17C-2. Definitions.

Unless the context clearly otherwise requires, the following definitions apply in this Article:

...
(3a) Critical incident. – An incident involving any use of force by a law enforcement officer that results in death or serious bodily injury to a person.
...."

SECTION 3.(b) Article 1 of Chapter 17C of the General Statutes is amended by adding a new section to read:

"§ 17C-15. Database for law enforcement officer critical incident information.

(a) The Division shall develop and maintain a statewide database for use by law enforcement agencies that tracks all critical incident data of law enforcement officers in North Carolina.

(b) All law enforcement agencies in the State that employ personnel certified by the Commission shall provide any information requested by the Division to maintain the database required by subsection (a) of this section.

(c) Information collected under this section that is confidential under State or federal law shall remain confidential.

(d) A law enforcement officer who is reported to the Division as having been involved in a critical incident who disputes being involved in a critical incident has a right, prior to being placed in the database, to request a hearing in superior court for a determination of whether the officer's involvement was properly placed in the database."

SECTION 3.(c) G.S. 17E-2 reads as rewritten:

"§ 17E-2. Definitions.

Unless the context clearly requires otherwise, the following definitions apply to this Chapter:

...
(4) "Critical incident" means an incident involving any use of force by a law enforcement officer that results in death or serious bodily injury to a person."

SECTION 3.(d) Chapter 17E of the General Statutes is amended by adding a new section to read:

"§ 17E-15. Database for justice officer critical incident information.

(a) The Division shall develop and maintain a statewide database for use by law enforcement agencies that tracks all critical incident data of justice officers in North Carolina.

(b) All law enforcement agencies in the State that employ personnel certified by the Commission shall provide any information requested by the Commission to maintain the database required by subsection (a) of this section.

(c) Information collected under this section that is confidential under State or federal law shall remain confidential.

(d) A justice officer who is reported to the Division as having been involved in a critical incident who disputes being involved in a critical incident has a right, prior to being placed in the database, to request a hearing in superior court for a determination of whether the officer's involvement was properly placed in the database."

SECTION 3.(e) This section becomes effective October 1, 2021, and applies to critical incidents on or after that date.

PART IV. REPORT REQUIREMENT RELATED TO GIGLIO MATERIAL

SECTION 4.(a) Article 1 of Chapter 17C of the General Statutes is amended by adding a new section to read:

"§ 17C-16. Requirement to report material relevant to testimony.

(a) Any person who is certified by the Commission or has received a conditional offer of employment and who has been notified that the person may not be called to testify at trial based on bias, interest, or lack of credibility shall report and provide a copy of that notification to the Criminal Justice Standards Division within 30 days of receiving the notification, except as provided in subsection (h) of this section. This requirement shall only apply if the person is notified by one of the following methods:

- (1) In writing by a superior court judge, district court judge, federal judge, district attorney, assistant district attorney, United States attorney, assistant United States attorney, or the person's agency head.
- (2) In open court by a superior court judge, district court judge, or federal judge, and documented in a written order.

(b) The report to the Division shall be in writing and shall state who notified the person that the person may not be called to testify at trial. A person required to report to the Division under subsection (a) of this section shall make the same report to the person's agency head within 30 days of being notified that the person may not be called to testify at trial. An agency head who receives a report that a person in the agency has been notified that they may not be called to testify at trial shall also report the notification to the Division in writing within 30 days of the agency head's receipt of that report.

(c) A superior court judge, district court judge, federal judge, district attorney, assistant district attorney, United States attorney, or assistant United States attorney who notifies a person that they may not be called to testify at trial as provided in subsection (a) of this section shall report that notification to the Division and provide a copy of the written document or order within 30 days of notifying the person that they may not be called to testify at trial.

(d) If the Division transfers to another agency the certification of any person required to report to the Division pursuant to subsection (a) of this section, the Division shall provide written notification to both the head of the new agency and the elected district attorney in the prosecutorial district where the agency is located that the person has been previously notified that the person may not be called to testify at trial. If the new agency receiving notification pursuant to this subsection is a State agency, the Division shall notify the elected district attorney in every prosecutorial district of the State.

(e) If any person required to report to the Division pursuant to subsection (a) of this section is subsequently informed in writing that that notification has been rescinded, the person shall provide the Division a copy of that document. The provisions of subsection (d) of this section do not apply if the person required to report pursuant to subsection (a) of this section is subsequently informed in writing that the notification has been rescinded.

(f) No later than March 1 each year, the Commission shall report to the Joint Legislative Oversight Committee on Justice and Public Safety regarding the number of individuals for whom the Division received a report required by subsection (a) of this section during the previous calendar year. The report shall include information for each case on whether a final agency decision has been entered pursuant to Chapter 150B of the General Statutes and what action, if any, has been taken against each certification. The report shall not include the name or any other identifying information of any person required to report pursuant to subsection (a) of this section.

(g) The reports and notifications received by the Division pursuant to this section shall not be public record.

(h) Any person who has received a notification that may meet the reporting requirement provided in subsection (a) of this section may apply for a hearing in superior court for a judicial determination of whether or not the person received a notification that the person may not be called to testify at trial based on bias, interest, or lack of credibility. This hearing is limited to reviewing whether (i) a person who is certified by the Commission or has received a conditional offer of employment, (ii) has been notified in writing by a superior court judge, district court judge, federal judge, district attorney, assistant district attorney, United States attorney, or

assistant United States attorney; or notified in open court by a superior court judge, district court judge, or federal judge, and documented in a written order, and (iii) that notification states that the person may not be called to testify at trial based on bias, interest, or lack of credibility, not matters of law or admissibility. The person must provide notice of the hearing to the Division. One extension of 15 days will be added to the 30-day reporting requirement provided in subsection (a) of this section if notice of a hearing is received."

SECTION 4.(b) Chapter 17E of the General Statutes is amended by adding a new section to read:

"§ 17E-16. Requirement to report material relevant to testimony.

(a) Any person who is certified by the Commission or has received a conditional offer of employment and who has been notified that the person may not be called to testify at trial based on bias, interest, or lack of credibility shall report and provide a copy of that notification to the Justice Officers' Standards Division within 30 days of receiving the notification, except as provided in subsection (h) of this section. This requirement shall only apply if the person is notified by one of the following methods:

- (1) In writing by a superior court judge, district court judge, federal judge, district attorney, assistant district attorney, United States attorney, assistant United States attorney, or the person's agency head.
- (2) In open court by a superior court judge, district court judge, or federal judge and documented in a written order.

(b) The report to the Division shall be in writing and shall state who notified the person that the person may not be called to testify at trial. A person required to report to the Division under subsection (a) of this section shall make the same report to the person's agency head within 30 days of being notified that the person may not be called to testify at trial. An agency head who receives a report that a person in the agency has been notified that they may not be called to testify at trial shall also report the notification to the Division in writing within 30 days of the agency head's receipt of that report.

(c) A superior court judge, district court judge, federal judge, district attorney, assistant district attorney, United States attorney, or assistant United States attorney who notifies a person that they may not be called to testify at trial as provided in subsection (a) of this section shall report that notification to the Division and provide a copy of the written document or order within 30 days of notifying the person that they may not be called to testify at trial.

(d) If the Division transfers to another agency the certification of any person required to report to the Division pursuant to subsection (a) of this section, the Division shall provide written notification to both the head of the new agency and the elected district attorney in the prosecutorial district where the agency is located that the person has been previously notified that the person may not be called to testify at trial. If the new agency receiving notification pursuant to this subsection is a State agency, the Division shall notify the elected district attorney in every prosecutorial district of the State.

(e) If any person required to report to the Division pursuant to subsection (a) of this section is subsequently informed in writing that that notification has been rescinded, the person shall provide the Division a copy of that document. The provisions of subsection (d) of this section do not apply if the person required to report pursuant to subsection (a) of this section is subsequently informed in writing that the notification has been rescinded.

(f) No later than March 1 each year, the Commission shall report to the Joint Legislative Oversight Committee on Justice and Public Safety regarding the number of individuals for whom the Division received a report required by subsection (a) of this section during the previous calendar year. The report shall include information for each case on whether a final agency decision has been entered pursuant to Chapter 150B of the General Statutes and what action, if any, has been taken against each certification. The report shall not include the name or any other identifying information of any person required to report pursuant to subsection (a) of this section.

(g) The reports and notifications received by the Division pursuant to this section shall not be public record.

(h) Any person who has received a notification that may meet the reporting requirement provided in subsection (a) of this section may apply for a hearing in superior court for a judicial determination of whether or not the person received a notification that the person may not be called to testify at trial based on bias, interest, or lack of credibility. This hearing is limited to reviewing whether (i) a person who is certified by the Commission or has received a conditional offer of employment, (ii) has been notified in writing by a superior court judge, district court judge, federal judge, district attorney, assistant district attorney, United States attorney, or assistant United States attorney; or notified in open court by a superior court judge, district court judge, or federal judge, and documented in a written order, and (iii) that notification states that the person may not be called to testify at trial based on bias, interest, or lack of credibility, not matters of law or admissibility. The person must provide notice of the hearing to the Division. One extension of 15 days will be added to the 30-day reporting requirement provided in subsection (a) of this section if notice of a hearing is received."

SECTION 4.(c) This section becomes effective October 1, 2021, and applies to notifications received prior to, on, or after that date by persons required to report pursuant to this act.

PART V. REQUIRE CERTAIN MINIMUM LAW ENFORCEMENT OFFICER STANDARDS

SECTION 5.(a) The Criminal Justice Education and Training Standards Commission and the Sheriffs' Education and Training Standards Commission shall jointly develop uniform, statewide minimum standards for law enforcement officers and justice officers and adopt these standards as rules.

SECTION 5.(b) Each Commission shall report the standards developed pursuant to subsection (a) of this section to the Joint Legislative Oversight Committee on Justice and Public Safety no later than December 31, 2021.

SECTION 5.(c) Each Commission may adopt temporary rules under G.S. 150B-21.1 to comply with this section and shall adopt permanent rules to comply with this section by December 31, 2022.

PART VI. TRANSPORTATION OF INVOLUNTARY COMMITMENT RESPONDENTS

SECTION 6.(a) G.S. 122C-251(f) reads as rewritten:

"(f) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, a clerk, a magistrate, or a district court judge, where applicable, may authorize either a health care provider of the respondent or the family or immediate friends of the respondent, if they so request, to transport the respondent in accordance with the procedures of this Article. This authorization shall only be granted in cases where the danger to the public, the health care provider of the respondent, the family or friends of the respondent, or the respondent himself or herself is not substantial. The health care provider of the respondent or the family or immediate friends of the respondent shall bear the costs of providing this transportation."

SECTION 6.(b) This section becomes effective October 1, 2021, and applies to custody orders issued on or after that date.

PART VII. LAW ENFORCEMENT OFFICER ENTRY REQUIREMENTS, ONGOING REQUIREMENTS, AND CREATE A PHYSICAL FITNESS STUDY

SECTION 7.(a) G.S. 17C-6(a) reads as rewritten:

"(a) In addition to powers conferred upon the Commission elsewhere in this Article, the Commission shall have the following powers, which shall be enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17C-10:

- ...
- (2) Establish minimum educational and training standards that must be met in order to qualify for entry level employment and retention as a criminal justice officer in temporary or probationary status or in a permanent position. The standards for entry level employment shall include all of the following:

...

c. Education and training to develop knowledge and increase awareness of effective mental health and wellness strategies for criminal justice officers.

- ...
- (14) Establish minimum standards for in-service training for criminal justice officers. In-service training standards shall include all of the following:

...

c. Training to develop knowledge and increase awareness of effective mental health and wellness strategies for criminal justice officers. The standards established shall include two hours of training on this issue every three years.

...."

SECTION 7.(b) G.S. 17E-4(a) reads as rewritten:

"(a) The Commission shall have the following powers, duties, and responsibilities, which are enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17E-8 and G.S. 17E-9:

- ...
- (2) Establish minimum educational and training standards that may be met in order to qualify for entry level employment as an officer in temporary or probationary status or in a permanent position. The standards for entry level employment of officers shall include all of the following:

...

c. Education and training to develop knowledge and increase awareness of effective mental health and wellness strategies for justice officers.

- ...
- (11) Establish minimum standards for in-service training for justice officers. In-service training standards shall include all of the following:

...

c. Training to develop knowledge and increase awareness of effective mental health and wellness strategies for justice officers. The standards established shall include two hours of training on this issue every three years.

...."

SECTION 7.(c) G.S. 17C-10(c) reads as rewritten:

"(c) In addition to the requirements of subsection (b) of this section, the Commission, by rules and regulations, shall fix other qualifications for the employment, training, and retention of criminal justice officers including minimum age, education, physical and mental standards, citizenship, good moral character, experience, and such other matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of criminal justice officers, ~~and the officers.~~ The Commission shall prescribe the means for presenting evidence of fulfillment of these requirements. The Commission shall require the administration of a psychological screening examination, including a face-to-face, in-person interview conducted by a licensed

psychologist, to determine the criminal justice officer's psychological suitability to properly fulfill the responsibilities of the criminal justice officer. If face-to-face, in-person is not practicable, the face-to-face evaluation can be virtual as long as both the audio and video allow for a professional clinical evaluation in a clinical environment. The psychological screening examination shall be given (i) prior to the initial certification or (ii) prior to the criminal justice officer performing any action requiring certification by the Commission.

Where minimum educational standards are not met, yet the individual shows potential and a willingness to achieve the standards by extra study, they may be waived by the Commission for the reasonable amount of time it will take to achieve the standards required. Such an educational waiver shall not exceed 12 months."

SECTION 7.(d) G.S. 17E-7(c) reads as rewritten:

"(c) In addition to the requirements of subsection (b) of this section, the Commission, by rules and regulations, may fix other qualifications for the employment and retention of justice officers including minimum age, education, physical and mental standards, citizenship, good moral character, experience, and such other matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of the ~~office, and the office.~~ The Commission shall prescribe the means for presenting evidence of fulfillment of these requirements. The Commission shall require the administration of a psychological screening examination, including a face-to-face, in-person interview conducted by a licensed psychologist, to determine the justice officer's psychological suitability to properly fulfill the responsibilities of the justice officer. If face-to-face, in-person is not practicable, the face-to-face evaluation can be virtual as long as both the audio and video allow for a professional clinical evaluation in a clinical environment. The psychological screening examination shall be given (i) prior to the initial certification or (ii) prior to the criminal justice officer performing any action requiring certification by the Commission.

Where minimum educational standards are not met, yet the individual shows potential and a willingness to achieve the standards by extra study, they may be waived by the Commission for the reasonable amount of time it will take to achieve the standards required. Upon petition from a sheriff, the Commission may grant a waiver of any provisions of this section (17E-7) for any justice officer serving that sheriff."

SECTION 7.(e) In developing the standards and training required by subsections (a) and (b) of this section, the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission are encouraged to adopt standards that provide training conducted by mental health professionals and through face-to-face instruction.

SECTION 7.(f) The North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission shall regularly provide information on any statewide mental health resources specifically available to criminal justice officers or justice officers to all criminal justice agencies or departments in the State that employ officers certified by either Commission.

SECTION 7.(g) All criminal justice agencies or departments in the State that employ criminal justice officers certified by the North Carolina Criminal Justice Education and Training Standards Commission or justice officers certified by the North Carolina Sheriffs' Education and Training Standards Commission shall coordinate with the appropriate local management entity/managed care organization (LME/MCO) or prepaid health plan, as defined under G.S. 108D-1, to make information on State and local mental health resources and programs easily available to all employees and develop policies to encourage employees to utilize the resources available.

SECTION 7.(h) The North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission shall jointly study the benefits, if any, of requiring physical fitness testing

throughout the career of a law enforcement officer, and shall also study whether that testing, if required, should be incrementally adjusted based upon the age of the law enforcement officer, and report to the Joint Legislative Oversight Committee on Justice and Public Safety no later than March 31, 2022.

SECTION 7.(i) The North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission shall implement the requirements of subsections (a) through (d) of this section no later than January 1, 2022. The requirements of subsections (c) and (d) of this section shall apply to certifications issued and employees entering employment on or after the implementation date of those requirements.

SECTION 7.(j) Subsections (a) through (d) of this section become effective January 1, 2022, and apply to applications for law enforcement certification filed on or after that date. The remainder of this section is effective when it becomes law.

PART VIII. DEVELOPMENT OF EARLY WARNING SYSTEMS

SECTION 8.(a) Chapter 17A of the General Statutes is amended by adding a new section to read:

"§ 17A-10. Development of law enforcement early warning system.

(a) Every agency in the State that employs personnel certified by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission shall develop and implement an early warning system to document and track the actions and behaviors of law enforcement officers for the purpose of intervening and improving performance. The early warning system required by this section shall include information, at a minimum, regarding the following:

- (1) Instances of the discharge of a firearm.**
- (2) Instances of use of force.**
- (3) Vehicle collisions.**
- (4) Citizen complaints.**

(b) Information collected under this section that is confidential under State or federal law shall remain confidential.

(c) For purposes of this section, "law enforcement officer" means any sworn law enforcement officers with the power of arrest, both State and local.

SECTION 8.(b) This section becomes effective December 1, 2021, and applies to actions and behaviors on or after that date.

PART IX. LAW ENFORCEMENT AGENCY BEST PRACTICES RECRUITING GUIDE

SECTION 9.(a) The North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission shall jointly develop a best practices guide to help law enforcement agencies recruit and retain a diverse workforce.

SECTION 9.(b) The North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission shall report to the Joint Legislative Oversight Committee on Justice and Public Safety no later than April 1, 2022, regarding the best practices guide required by subsection (a) of this section.

PART X. INVESTIGATIONS OF OFFICER-INVOLVED DEATHS

SECTION 10.(a) G.S. 143B-919 is amended by adding a new subsection to read:

"(b1) The Bureau shall, upon request of the Governor or a sheriff, chief of police, head of a State law enforcement agency, district attorney, or the Commissioner of Prisons, investigate and prepare evidence in the event of any of the following:

- (1) A sworn law enforcement officer with the power to arrest uses force against an individual in the performance of the officer's duties that results in the death of the individual.
- (2) An individual in the custody of the Department of Public Safety, a State prison, a county jail, or a local confinement facility, regardless of the physical location of the individual, dies."

SECTION 10.(b) This section becomes effective October 1, 2021.

PART XI. MANDATORY IN-SERVICE TRAINING FOR LAW ENFORCEMENT OFFICERS

SECTION 11.(a) G.S. 17C-6(a), as amended by Section 7 of this act, reads as rewritten:

"(a) In addition to powers conferred upon the Commission elsewhere in this Article, the Commission shall have the following powers, which shall be enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17C-10:

- ...
- (14) Establish minimum standards for in-service training for criminal justice officers. In-service training standards for sworn law enforcement officers shall include all of the ~~following:~~following training topics:
 - a. ~~Training in response~~ Response to, and investigation of, domestic violence cases, as well as training investigation for evidence-based prosecutions.
 - b. ~~Training on juvenile~~ Juvenile justice issues, including (i) the handling and processing of juvenile matters for referrals, diversion, arrests, and detention; (ii) best practices for handling incidents involving juveniles; (iii) adolescent development and psychology; and (iv) promoting relationship building with youth as a key to delinquency prevention.
 - c. Ethics.
 - d. Mental health for criminal justice officers.
 - e. Community policing.
 - f. Minority sensitivity.
 - g. Use of force.
 - h. The duty to intervene and report.

...."

SECTION 11.(b) G.S. 17E-4(a), as amended by Section 7 of this act, reads as rewritten:

"(a) The Commission shall have the following powers, duties, and responsibilities, which are enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17E-8 and G.S. 17E-9:

- ...
- (11) Establish minimum standards for in-service training for justice officers. In-service training standards for sworn law enforcement officers shall include all of the ~~following:~~following training topics:
 - a. ~~Training in response~~ Response to, and investigation of, domestic violence cases, as well as training in investigation for evidence-based prosecutions. For purposes of the domestic violence training requirement, the term "justice officer" shall include those defined in G.S. 17E-2(3)a., except that the term shall not include "special deputy sheriffs" as defined in G.S. 17E-2(3)a.
 - b. ~~Training on juvenile~~ Juvenile justice issues, including (i) the handling and processing of juvenile matters for referrals, diversion, arrests, and

detention; (ii) best practices for handling incidents involving juveniles; (iii) adolescent development and psychology; and (iv) promoting relationship building with youth as a key to delinquency prevention.

- c. Ethics.
- d. Mental health for justice officers.
- e. Community policing.
- f. Minority sensitivity.
- g. Use of force.
- h. The duty to intervene and report.

...."

SECTION 11.(c) This section becomes effective January 1, 2022.

PART XII. EXEMPT CHANGES TO LAW ENFORCEMENT IN-SERVICE TRAINING STANDARDS FROM RULEMAKING

SECTION 12.(a) G.S. 150B-1(d) reads as rewritten:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

...

(6a) The Criminal Justice Education and Training Standards Commission with respect to establishing minimum standards for in-service training for criminal justice officers under G.S. 17C-6(a)(14).

(6b) The Sheriffs' Education and Training Standards Commission with respect to establishing minimum standards for in-service training for justice officers under G.S. 17E-4(a)(11).

...."

SECTION 12.(b) This section is effective when it becomes law.

PART XIII. DECRIMINALIZATION OF CERTAIN ORDINANCES

SECTION 13.(a) G.S. 153A-123 reads as rewritten:

"§ 153A-123. Enforcement of ordinances.

...

~~(b) Unless the board of commissioners has provided otherwise, Except for the types of ordinances listed in subsection (b1) of this section, violation of a county ordinance is may be a misdemeanor or infraction as provided by G.S. 14-4. G.S. 14-4 only if the county specifies such in the ordinance. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4. Notwithstanding G.S. 153A-45, no ordinance specifying a criminal penalty may be enacted at the meeting in which it is first introduced.~~

(b1) No ordinance of the following types may impose a criminal penalty:

- (1) Any ordinance adopted under Article 18 of this Chapter, Planning and Regulation of Development or, its successor, Chapter 160D of the General Statutes, except for those ordinances related to unsafe buildings.
- (2) Any ordinance adopted pursuant to G.S. 153A-134, Regulating and licensing businesses, trades, etc.
- (3) Any ordinance adopted pursuant to G.S. 153A-138, Registration of mobile homes, house trailers, etc.
- (4) Any ordinance adopted pursuant to G.S. 153A-140.1, Stream-clearing programs.
- (5) Any ordinance adopted pursuant to G.S. 153A-143, Regulation of outdoor advertising or, its successor, G.S. 160D-912, Outdoor advertising.

- (6) Any ordinance adopted pursuant to G.S. 153A-144, Limitations on regulating solar collectors or, its successor, G.S. 160D-914, Solar collectors.
- (7) Any ordinance adopted pursuant to G.S. 153A-145, Limitations on regulating cisterns and rain barrels.
- (8) Any ordinance regulating trees.

...."

SECTION 13.(b) G.S. 160A-175 reads as rewritten:

"§ 160A-175. Enforcement of ordinances.

...

(b) Unless the Council shall otherwise provide, Except for the types of ordinances listed in subsection (b1) of this section, violation of a city ordinance is may be a misdemeanor or

infraction as provided by ~~G.S. 14-4.~~ G.S. 14-4 only if the city specifies such in the ordinance. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4. Notwithstanding G.S. 160A-75, no ordinance

specifying a criminal penalty may be enacted at the meeting in which it is first introduced.

(b1) No ordinance of the following types may impose a criminal penalty:

- (1) Any ordinance adopted under Article 19 of this Chapter, Planning and Regulation of Development, or its successor, Chapter 160D of the General Statutes, except for those ordinances related to unsafe buildings.
- (2) Any ordinance adopted pursuant to G.S. 160A-193.1, Stream-clearing programs.
- (3) Any ordinance adopted pursuant to G.S. 160A-194, Regulating and licensing businesses, trades, etc.
- (4) Any ordinance adopted pursuant to G.S. 160A-199, Regulation of outdoor advertising or, its successor, G.S. 160D-912, Outdoor advertising.
- (5) Any ordinance adopted pursuant to G.S. 160A-201, Limitations on regulating solar collectors or, its successor, G.S. 160D-914, Solar collectors.
- (6) Any ordinance adopted pursuant to G.S. 160A-202, Limitations on regulating cisterns and rain barrels.
- (7) Any ordinance adopted pursuant to G.S. 160A-304, Regulation of taxis.
- (8) Any ordinance adopted pursuant to G.S. 160A-306, Building setback lines.
- (9) Any ordinance adopted pursuant to G.S. 160A-307, Curb cut regulations.
- (10) Any ordinance regulating trees.

...."

SECTION 13.(c) G.S. 14-4 reads as rewritten:

"§ 14-4. Violation of local ordinances misdemeanor.

(a) Except as provided in subsection (b), (b) or (c) of this section, if any person shall violate an ordinance of a county, city, town, or metropolitan sewerage district created under Article 5 of Chapter 162A, he shall be guilty of a Class 3 misdemeanor and shall be fined not more than five hundred dollars (\$500.00). No fine shall exceed fifty dollars (\$50.00) unless the ordinance expressly states that the maximum fine is greater than fifty dollars (\$50.00).

(b) If any person shall violate an ordinance of a county, city, or town regulating the operation or parking of vehicles, he shall be responsible for an infraction and shall be required to pay a penalty of not more than fifty dollars (\$50.00).

(c) A person may not be found responsible or guilty of a local ordinance violation punishable pursuant to subsection (a) of this section if, when tried for that violation, the person produces proof of compliance with the local ordinance through any of the following:

- (1) No new alleged violations of the local ordinance within 30 days from the date of the initial alleged violation.

- (2) The person provides proof of a good-faith effort to seek assistance to address any underlying factors related to unemployment, homelessness, mental health, or substance abuse that might relate to the person's ability to comply with the local ordinance."

SECTION 13.(d) This section becomes effective December 1, 2021, and applies to offenses and violations committed on or after that date.

PART XIV. REQUIRE MANDATORY FIRST APPEARANCE FOR MISDEMEANORS WHEN DEFENDANT IS IN CUSTODY AND REQUIRE FIRST APPEARANCE FOR ALL CHARGES WHEN DEFENDANT IS IN CUSTODY TO BE HELD WITHIN SEVENTY-TWO HOURS

SECTION 14.(a) G.S. 15A-601 reads as rewritten:

"§ 15A-601. First appearance before a district court judge; ~~right in felony and other cases in original jurisdiction of superior court; consolidation of first appearance before magistrate and before district court judge; first appearance before clerk of superior court; use of two-way audio and video transmission.~~

(a) Any defendant charged in a magistrate's order under G.S. 15A-511 or criminal process under Article 17 of this Chapter, Criminal Process, with a crime in the original jurisdiction of the superior court must be brought before a district court judge in the district court district as defined in G.S. 7A-133 in which the crime is charged to have been committed. This first appearance before a district court judge is not a critical stage of the proceedings against the defendant.

Any defendant charged in a magistrate's order under G.S. 15A-511 or criminal process under Article 17 of this Chapter, Criminal Process, with a misdemeanor offense and held in custody must be brought before a district court judge in the district court district as defined in G.S. 7A-133 in which the crime is charged to have been committed. This first appearance before a district court judge is not a critical stage of the proceedings against the defendant.

...

(b) When a district court judge conducts an initial appearance as provided in G.S. 15A-511, ~~he~~ the judge may consolidate those proceedings and the proceedings under this Article.

(c) Unless the defendant is released pursuant to Article 26 of this Chapter, Bail, first appearance before a district court judge must be held within ~~96-72~~ hours after the defendant is taken into custody or at the first regular session of the district court in the county, whichever occurs first. If the defendant is not taken into custody, or is released pursuant to Article 26 of this Chapter, Bail, within ~~96-72~~ hours after being taken into custody, first appearance must be held at the next session of district court held in the county. This subsection does not apply to a defendant whose first appearance before a district court judge has been set in a criminal summons pursuant to G.S. 15A-303(d).

...

(e) The clerk of the superior court in the county in which the defendant is taken into custody may conduct a first appearance as provided in this Article if a district court judge is not available in the county within ~~96~~ 72 hours after the defendant is taken into custody. A magistrate may conduct the first appearance if the clerk is not available. The clerk, clerk or magistrate, in conducting a first appearance, shall proceed under this Article as would a district court judge."

SECTION 14.(b) This section becomes effective December 1, 2021, and applies to criminal processes served on or after that date.

PART XV. REQUIRE USE OF THE NATIONAL DECERTIFICATION INDEX MAINTAINED BY THE INTERNATIONAL ASSOCIATION OF DIRECTORS OF LAW

ENFORCEMENT STANDARDS AND TRAINING IN THE CERTIFICATION PROCESS FOR CERTIFIED PERSONNEL

SECTION 15.(a) G.S. 17C-6(a) reads as rewritten:

"(a) In addition to powers conferred upon the Commission elsewhere in this Article, the Commission shall have the following powers, which shall be enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17C-10:

...

(21) Search the National Decertification Index (NDI) maintained by the International Association of Directors of Law Enforcement Standards and Training (IADLEST) using the name of every applicant for certification or applicant for lateral transfer, and any other personal identifying information necessary to complete the search, and shall utilize any record of conviction of a criminal offense received as a result of the search during the application and lateral transfer process to determine if the applicant has any record that would disqualify the applicant for certification."

SECTION 15.(b) G.S. 17E-4(a) reads as rewritten:

"(a) The Commission shall have the following powers, duties, and responsibilities, which are enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17E-8 and G.S. 17E-9:

...

(17) Search the National Decertification Index (NDI) maintained by the International Association of Directors of Law Enforcement Standards and Training (IADLEST) using the name of every applicant for certification or applicant for lateral transfer, and any other personal identifying information necessary to complete the search, and shall utilize any record of conviction of a criminal offense received as a result of the search during the application and lateral transfer process to determine if the applicant has any record that would disqualify the applicant for certification.

...."

SECTION 15.(c) This section becomes effective October 1, 2021, and applies to applications for certification submitted on or after that date.

PART XVI. ESTABLISH A DUTY FOR LAW ENFORCEMENT OFFICERS TO INTERVENE IN AND REPORT EXCESSIVE USE OF FORCE

SECTION 16.(a) G.S. 15A-401 is amended by adding a new subsection to read: "(d1)

Duty to Intervene and Report Excessive Use of Force. – A law enforcement officer, while in the line of duty, who observes another law enforcement officer use force against another person that the observing officer reasonably believes exceeds the amount of force authorized by subsection (d) of this section and who possesses a reasonable opportunity to intervene, shall, if it is safe to do so, attempt to intervene to prevent the use of excessive force. Additionally, the observing officer shall, within a reasonable period of time not to exceed 72 hours thereafter, report what the officer reasonably believes to be an unauthorized use of force to a superior law enforcement officer within the agency of the observing officer, even if the observing officer did not have a reasonable opportunity to intervene. If the head of the law enforcement agency of the observing officer was involved or present during what the observing officer reasonably believes to be unauthorized use of force, the observing officer shall make the report to the highest ranking law enforcement officer of that officer's agency who was not involved in or present during the use of force."

SECTION 16.(b) This section becomes effective December 1, 2021, and applies to uses of force that occur on or after that date.

PART XVII. REMOVE THE STANDARDS COMMISSIONS FROM A NONEXCLUSIVE LIST OF STATE AGENCY LICENSING BOARDS

SECTION 17.(a) G.S. 93B-1(3)e. is repealed.

SECTION 17.(b) This section becomes effective December 1, 2021.

PART XVIII. ADDRESS CONSTITUTIONAL ISSUES WITH SATELLITE-BASED MONITORING RAISED IN STATE V. GRADY AND CREATE A PROCESS TO REVIEW WHETHER OFFENDERS SUBJECT TO THAT CASE WHICH WERE REMOVED FROM SATELLITE-BASED MONITORING ARE OTHERWISE ELIGIBLE

SECTION 18.(a) Part V of Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-208.39. Legislative finding of efficacy.

The General Assembly finds that empirical and statistical reports such as the 2015 California Study, "Does GPS Improve Recidivism among High Risk Sex Offenders? Outcomes for California's GPS Pilot for High Risk Sex Offender Parolees," show that sex offenders monitored with the global positioning system (GPS) are less likely than other sex offenders to receive a violation for committing a new crime, and that offenders monitored by GPS demonstrated significantly better outcomes for both increasing compliance and reducing recidivism. It is the intent of the General Assembly to protect the public from victimization. Therefore, the General Assembly recognizes that the GPS monitoring program is an effective tool to deter criminal behavior among sex offenders."

SECTION 18.(b) G.S. 14-208.6 reads as rewritten:

"§ 14-208.6. Definitions.

The following definitions apply in this Article:

...
(3e) Reoffender. – A person who has two or more convictions for a felony that is described in G.S. 14-208.6(4). For purposes of this definition, if an offender is convicted of more than one offense in a single session of court, only one conviction is counted.

...."

SECTION 18.(c) G.S. 14-208.40 reads as rewritten:

"§ 14-208.40. Establishment of program; creation of guidelines; duties.

(a) The Division of Adult Correction and Juvenile Justice of the Department of Public Safety shall establish a sex offender monitoring program that uses a continuous satellite-based monitoring system and shall create guidelines to govern the program. The program shall be designed to monitor three categories of offenders as follows:

- (1) Any offender who is convicted of a reportable conviction as defined by G.S. 14-208.6(4) and who is required to register under Part 3 of Article 27A of Chapter 14 of the General Statutes because the defendant is classified as a sexually violent predator, is a ~~recidivist, reoffender,~~ or was convicted of an aggravated offense as those terms are defined in ~~G.S. 14-208.6.~~ G.S. 14-208.6 and based on the Division of Adult Correction and Juvenile Justice's risk assessment program requires the highest possible level of supervision and monitoring.
- (2) Any offender who satisfies all of the following criteria: (i) is convicted of a reportable conviction as defined by G.S. 14-208.6(4), (ii) is required to register under Part 2 of Article 27A of Chapter 14 of the General Statutes, (iii) has committed an offense involving the physical, mental, or sexual abuse of a minor, and (iv) based on the Division of Adult Correction and Juvenile

Justice's risk assessment program requires the highest possible level of supervision and monitoring.

- (3) Any offender who is convicted of G.S. 14-27.23 or ~~G.S. 14-27.28, who shall be enrolled in the satellite-based monitoring program for the offender's natural life upon termination of the offender's active punishment.~~ G.S. 14-27.28 and based on the Division of Adult Correction and Juvenile Justice's risk assessment program requires the highest possible level of supervision and monitoring.

(b) In developing the guidelines for the program, the Division of Adult Correction and Juvenile Justice shall require that any offender who is enrolled in the satellite-based program submit to an active continuous satellite-based monitoring program, unless an active program will not work as provided by this section. If the Division of Adult Correction and Juvenile Justice determines that an active program will not work as provided by this section, then the Division of Adult Correction and Juvenile Justice shall require that the defendant submit to a passive continuous satellite-based program that works within the technological or geographical limitations.

(c) The satellite-based monitoring program shall use a system that provides all of the following:

- (1) Time-correlated and continuous tracking of the geographic location of the subject using a global positioning system based on satellite and other location tracking technology.
- (2) Reporting of subject's violations of prescriptive and proscriptive schedule or location requirements. Frequency of reporting may range from once a day (passive) to near real-time (active).

(d) The Division of Adult Correction and Juvenile Justice may contract with a single vendor for the hardware services needed to monitor subject offenders and correlate their movements to reported crime incidents. The contract may provide for services necessary to implement or facilitate any of the provisions of this Part."

SECTION 18.(d) G.S. 14-208.40A reads as rewritten:

"§ 14-208.40A. Determination of satellite-based monitoring requirement by court.

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), during the sentencing phase, the district attorney shall present to the court any evidence that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a ~~recidivist, reoffender,~~ (iii) the conviction offense was an aggravated offense, (iv) the conviction offense was a violation of G.S. 14-27.23 or G.S. 14-27.28, or (v) the offense involved the physical, mental, or sexual abuse of a minor. The district attorney shall have no discretion to withhold any evidence required to be submitted to the court pursuant to this subsection.

The offender shall be allowed to present to the court any evidence that the district attorney's evidence is not correct.

(b) After receipt of the evidence from the parties, the court shall determine whether the offender's conviction places the offender in one of the categories described in G.S. 14-208.40(a), and if so, shall make a finding of fact of that determination, specifying whether (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a ~~recidivist, reoffender,~~ (iii) the conviction offense was an aggravated offense, (iv) the conviction offense was a violation of G.S. 14-27.23 or G.S. 14-27.28, or (v) the offense involved the physical, mental, or sexual abuse of a minor.

(c) If the court finds that the offender has been classified as a sexually violent predator, is a ~~recidivist, reoffender,~~ has committed an aggravated offense, or was convicted of G.S. 14-27.23 or G.S. 14-27.28, the court shall order that the offender to enroll in a satellite-based monitoring program for life. Division of Adult Correction and Juvenile Justice do a risk

assessment of the offender. The Division of Adult Correction and Juvenile Justice shall have up to 60 days to complete the risk assessment of the offender and report the results to the court.

(c1) Upon receipt of a risk assessment from the Division of Adult Correction and Juvenile Justice pursuant to subsection (c) of this section, the court shall determine whether, based on the Division of Adult Correction and Juvenile Justice's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of 10 years.

(d) If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that the offense is not an aggravated offense or a violation of G.S. 14-27.23 or G.S. 14-27.28 and the offender is not a ~~recidivist, reoffender,~~ the court shall order that the Division of Adult Correction do a risk assessment of the offender. The Division of Adult Correction and Juvenile Justice shall have ~~a minimum of 30 days, but not more than 60 days,~~ up to 60 days to complete the risk assessment of the offender and report the results to the court.

(e) Upon receipt of a risk assessment from the Division of Adult Correction and Juvenile Justice pursuant to subsection (d) of this section, the court shall determine whether, based on the Division of Adult Correction and Juvenile Justice's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by ~~the court.~~ the court, not to exceed 10 years."

SECTION 18.(e) G.S. 14-208.40B reads as rewritten:

"§ 14-208.40B. Determination of satellite-based monitoring requirement in certain circumstances.

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), and there has been no determination by a court on whether the offender shall be required to enroll in satellite-based monitoring, the Division of Adult Correction and Juvenile Justice shall make an initial determination on whether the offender falls into one of the categories described in G.S. 14-208.40(a).

(b) If the Division of Adult Correction and Juvenile Justice determines that the offender falls into one of the categories described in G.S. 14-208.40(a), the district attorney, representing the Division of Adult Correction and Juvenile Justice, shall schedule a hearing in superior court for the county in which the offender resides. The Division of Adult Correction and Juvenile Justice shall notify the offender of the Division of Adult Correction and Juvenile Justice's determination and the date of the scheduled hearing by certified mail sent to the address provided by the offender pursuant to G.S. 14-208.7. The hearing shall be scheduled no sooner than 15 days from the date the notification is mailed. Receipt of notification shall be presumed to be the date indicated by the certified mail receipt. Upon the court's determination that the offender is indigent and entitled to counsel, the court shall assign counsel to represent the offender at the hearing pursuant to rules adopted by the Office of Indigent Defense Services.

(c) At the hearing, the court shall determine if the offender falls into one of the categories described in G.S. 14-208.40(a). The court shall hold the hearing and make findings of fact pursuant to G.S. 14-208.40A.

If the court finds that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a ~~recidivist, reoffender,~~ (iii) the conviction offense was an aggravated offense, or (iv) the conviction offense was a violation of G.S. 14-27.23 or G.S. 14-27.28, the court shall order that the offender to enroll in satellite-based monitoring for life. Division of Adult Correction and Juvenile Justice do a risk assessment of the offender. The Division of Adult Correction and Juvenile Justice shall have up to 60 days to complete the risk assessment of the offender and report the results to the court.

(c1) Upon receipt of a risk assessment from the Division of Adult Correction and Juvenile Justice pursuant to subsection (c) of this section, the court shall determine whether, based on the Division of Adult Correction and Juvenile Justice's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of 10 years.

If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that the offense is not an aggravated offense or a violation of G.S. 14-27.23 or G.S. 14-27.28, and the offender is not a ~~recidivist, reoffender,~~ the court shall order that the Division of Adult Correction and Juvenile Justice do a risk assessment of the offender. The Division of Adult Correction and Juvenile Justice shall have ~~a minimum of 30 days, but not more than 60 days,~~ up to 60 days to complete the risk assessment of the offender and report the results to the court. The Division of Adult Correction and Juvenile Justice may use a risk assessment of the offender done within six months of the date of the hearing.

Upon receipt of a risk assessment from the Division of Adult Correction and Juvenile Justice, the court shall determine whether, based on the Division of Adult Correction and Juvenile Justice's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the ~~court,~~ court, not to exceed 10 years."

SECTION 18.(f) G.S. 14-208.41 reads as rewritten:

"§ 14-208.41. Enrollment in satellite-based monitoring programs mandatory; length of enrollment.~~enrollment; tolling.~~

(a) Any person described by G.S. 14-208.40(a)(1) shall enroll in a satellite-based monitoring program with the Section of Community Corrections of the Division of Adult Correction and Juvenile Justice office in the county where the person resides. The person shall remain enrolled in the satellite-based monitoring program for the registration period imposed ~~under G.S. 14-208.23 which is the person's life,~~ for a period required by G.S. 14-208.40A or G.S. 14-208.40B unless the requirement to enroll in the satellite-based monitoring program is terminated or modified pursuant to G.S. 14-208.43.

(b) Any person described by G.S. 14-208.40(a)(2) who is ordered by the court pursuant to G.S. 14-208.40A or G.S. 14-208.40B to enroll in a satellite-based monitoring program shall do so with the Section of Community Corrections of the Division of Adult Correction and Juvenile Justice office in the county where the person resides. The person shall remain enrolled in the satellite-based monitoring program for the period of time ordered by the court.

(c) Any person described by G.S. 14-208.40(a)(3), upon completion of active punishment, shall enroll in a satellite-based monitoring program with the Section of Community Corrections of the Division of Adult Correction and Juvenile Justice office in the county where the person resides. The person shall enroll in the satellite-based monitoring program for the entire period of post-release supervision and shall remain enrolled in the satellite-based monitoring program ~~for the person's life,~~ the period required by G.S. 14-208.40A or G.S. 14-208.40B unless the requirement to enroll in the satellite-based monitoring program is terminated or modified pursuant to G.S. 14-208.43. Any term of imprisonment based on revocation of probation or post-release supervision for the conviction which resulted in satellite-based monitoring tolls the period of enrollment."

SECTION 18.(g) G.S. 14-208.42 reads as rewritten:

"§ 14-208.42. Offenders required to submit to satellite-based monitoring required to cooperate with Division of Adult Correction and Juvenile Justice upon completion of sentence.

Notwithstanding any other provision of law, when an offender is required to enroll in satellite-based monitoring pursuant to G.S. 14-208.40A or G.S. 14-208.40B, upon completion of the offender's sentence and any term of parole, post-release supervision, intermediate punishment, or supervised probation that follows the sentence, the offender shall continue to be enrolled in the satellite-based monitoring program for the period required by G.S. 14-208.40A or G.S. 14-208.40B unless the requirement that the person enroll in a satellite-based monitoring program is terminated or modified pursuant to G.S. 14-208.43.

The Division of Adult Correction and Juvenile Justice shall have the authority to have contact with the offender at the offender's residence or to require the offender to appear at a specific location as needed for the purpose of enrollment, to receive monitoring equipment, to have equipment examined or maintained, and for any other purpose necessary to complete the requirements of the satellite-based monitoring program. The offender shall cooperate with the Division of Adult Correction and Juvenile Justice and the requirements of the satellite-based monitoring program until the offender's requirement to enroll is terminated and the offender has returned all monitoring equipment to the Division of Adult Correction and Juvenile Justice."

SECTION 18.(h) G.S. 14-208.43 reads as rewritten:

"§ 14-208.43. Request-Petition for termination or modification of the satellite-based monitoring requirement.

(a) An offender described by G.S. 14-208.40(a)(1) or G.S. 14-208.40(a)(3) who is required to submit to satellite-based monitoring ~~for the offender's life~~ may file a request-petition for termination or modification of the monitoring requirement with the ~~Post-Release Supervision and Parole Commission~~. ~~The request to terminate the satellite-based monitoring requirement and to terminate the accompanying requirement of unsupervised probation may not be submitted until at least one year after the offender: (i) has served his or her sentence for the offense for which the satellite-based monitoring requirement was imposed, and (ii) has also completed any period of probation, parole, or post-release supervision imposed as part of the sentence.~~ superior court in the county where the conviction occurred five years after the date of initial enrollment.

~~(b) Upon receipt of the request for termination, the Commission shall review documentation contained in the offender's file and the statewide registry to determine whether the person has complied with the provisions of this Article. In addition, the Commission shall conduct fingerprint-based state and federal criminal history record checks to determine whether the person has been convicted of any additional reportable convictions.~~

~~(c) If it is determined that the person has not received any additional reportable convictions during the period of satellite-based monitoring and the person has substantially complied with the provisions of this Article, the Commission may terminate the monitoring requirement if the Commission finds that the person is not likely to pose a threat to the safety of others.~~

~~(d) If it is determined that the person has received any additional reportable convictions during the period of satellite-based monitoring or has not substantially complied with the provisions of this Article, the Commission shall not order the termination of the monitoring requirement.~~

~~(d1) Notwithstanding the provisions of this section, if the Commission is notified by the Division of Adult Correction and Juvenile Justice of the Department of Public Safety that the offender has been released, pursuant to G.S. 14-208.12A, from the requirement to register under Part 2 of Article 27A of this Chapter, upon request of the offender, the Commission shall order the termination of the monitoring requirement.~~

~~(e) The Commission shall not consider any request to terminate a monitoring requirement except as provided by this section. The district attorney in the district in which the petition is filed shall be given notice of the petition at least three weeks before the hearing on the matter. The petitioner may present evidence in support of the petition, and the district attorney may~~

present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied.

(c) The victim of the underlying offense may appear and be heard by the court in a proceeding regarding a petition for termination or modification of satellite-based monitoring requirement. If the victim has elected to receive notices of such proceedings, the district attorney's office shall notify the victim of the date, time, and place of the hearing. The district attorney's office may provide the required notification electronically or by telephone, unless the victim requests otherwise. The victim shall be responsible for notifying the district attorney's office of any changes in the victim's address and telephone number or other contact information. The judge in any court proceeding subject to this section shall inquire as to whether the victim is present and wishes to be heard. If the victim is present and wishes to be heard, the court shall grant the victim an opportunity to be reasonably heard. The right to be reasonably heard may be exercised, at the victim's discretion, through an oral statement, submission of a written statement, or submission of an audio or video statement.

(d) The petition may be granted only if the court makes all of the following findings:

(1) The petitioner has been enrolled in the satellite-based monitoring program for at least five years.

(2) The petitioner no longer requires the highest possible level of supervision and monitoring for 10 years.

(e) The court may order any of the following:

(1) The petitioner to remain enrolled in the satellite-based monitoring program for a period of time to be specified by the court, not to exceed a total of 10 years.

(2) The petitioner's requirement to enroll in the satellite-based monitoring program be terminated.

(f) If the court denies the petition, the person may again petition the court for relief in accordance with this section two years from the date of the denial of the original petition to terminate the satellite-based monitoring requirement. If the court grants the petition, the clerk of court shall forward a certified copy of the order to the Post Release Supervision and Parole Commission. The ~~Commission~~ court has no authority to consider or terminate a monitoring requirement for an offender described in G.S. 14-208.40(a)(2)."

SECTION 18.(i) Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-208.46. Petition for postenrollment determination for lifetime satellite-based monitoring enrollees.

(a) An offender who is enrolled in a satellite-based monitoring for life may file a petition for termination or modification of the monitoring requirement with the superior court in the county where the conviction occurred five years after the date of initial enrollment.

(b) The district attorney in the district in which the petition is filed shall be given notice of the petition at least three weeks before the hearing on the matter. The petitioner may present evidence in support of the petition, and the district attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied.

(c) The victim of the underlying offense may appear and be heard by the court in a proceeding regarding a petition for termination or modification of satellite-based monitoring requirement. If the victim has elected to receive notices of such proceedings, the district attorney's office shall notify the victim of the date, time, and place of the hearing. The district attorney's office may provide the required notification electronically or by telephone, unless the victim requests otherwise. The victim shall be responsible for notifying the district attorney's office of any changes in the victim's address and telephone number or other contact information. The judge in any court proceeding subject to this section shall inquire as to whether the victim is

present and wishes to be heard. If the victim is present and wishes to be heard, the court shall grant the victim an opportunity to be reasonably heard. The right to be reasonably heard may be exercised, at the victim's discretion, through an oral statement, submission of a written statement, or submission of an audio or video statement.

(d) If the petitioner has not been enrolled in the satellite-based monitoring program for at least 10 years, the court shall order the petitioner to remain enrolled in the satellite-based monitoring program for a total of 10 years.

(e) If the petitioner has been enrolled in the satellite-based monitoring program for more than 10 years, the court shall order the petitioner's requirement to enroll in the satellite-based monitoring program be terminated.

(f) The court has no authority to terminate the satellite-based monitoring requirement for an offender ordered to satellite-based monitoring for life prior to 10 years of enrollment."

SECTION 18.(j) G.S. 15A-1343 reads as rewritten:

"§ 15A-1343. Conditions of probation.

...
(a1) Community and Intermediate Probation Conditions. – In addition to any conditions a court may be authorized to impose pursuant to G.S. 15A-1343(b1), the court may include any one or more of the following conditions as part of a community or intermediate punishment:

...
(6) Submission to satellite-based monitoring, pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by ~~G.S. 14-208.40(a)(2)~~G.S. 14-208.40(a)(2), and based on the Division of Adult Correction and Juvenile Justice's risk assessment program requires the highest possible level of supervision and monitoring.

...
(b2) Special Conditions of Probation for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – As special conditions of probation, a defendant who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, must:

...
(7) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by ~~G.S. 14-208.40(a)(1)~~G.S. 14-208.40(a)(1), and the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, based on the Division's risk assessment program, recommends that the defendant submit to the highest possible level of supervision and monitoring.

...."

SECTION 18.(k) G.S. 15A-1343.2 reads as rewritten:

"§ 15A-1343.2. Special probation rules for persons sentenced under Article 81B.

(a) Applicability. – This section applies only to persons sentenced under Article 81B of this Chapter.

...
(f) Delegation to Probation Officer in Intermediate Punishments. – Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Section of Community Corrections of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety may require an offender sentenced to intermediate punishment to do any of the following:

...
(5) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by ~~G.S. 14-208.40(a)(2)~~G.S. 14-208.40(a)(2), and based on the Division of

Adult Correction and Juvenile Justice's risk assessment program requires the highest possible level of supervision and monitoring.

...
If the Section imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

...
(f1) Mandatory Condition of Satellite-Based Monitoring for Some Sex Offenders. – Notwithstanding any other provision of this section, the court shall impose satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes as a condition of probation on any offender who is described by ~~G.S. 14-208.40(a)(1)~~G.S. 14-208.40(a)(1), and based on the Division of Adult Correction and Juvenile Justice's risk assessment program requires the highest possible level of supervision and monitoring.

...."

SECTION 18.(l) G.S. 15A-1344(e2) is repealed.

SECTION 18.(m) G.S. 15A-1368.4 reads as rewritten:

"§ 15A-1368.4. Conditions of post-release supervision.

(a) In General. – Conditions of post-release supervision may be reintegrative in nature or designed to control the supervisee's behavior and to enforce compliance with law or judicial order. A supervisee may have his supervision period revoked for any violation of a controlling condition or for repeated violation of a reintegrative condition. Compliance with reintegrative conditions may entitle a supervisee to earned time credits as described in G.S. 15A-1368.2(d).

...
(b1) Additional Required Conditions for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – In addition to the required condition set forth in subsection (b) of this section, for a supervisee who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, controlling conditions, violations of which may result in revocation of post-release supervision, are:

...
(6) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the offense is a reportable conviction as defined by ~~G.S. 14-208.6(4)~~ and ~~G.S. 14-208.6(4)~~, the supervisee is in the category described by ~~G.S. 14-208.40(a)(1)~~G.S. 14-208.40(a)(1), and based on the Division of Adult Correction and Juvenile Justice's risk assessment program requires the highest possible level of supervision and monitoring.

(7) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the offense is a reportable conviction as defined by ~~G.S. 14-208.6(4)~~ and ~~G.S. 14-208.6(4)~~, the supervisee is in the category described by ~~G.S. 14-208.40(a)(2)~~G.S. 14-208.40(a)(2), and based on the Division of Adult Correction and Juvenile Justice's risk assessment program requires the highest possible level of supervision and monitoring.

...."

SECTION 18.(n) G.S. 15A-1374 reads as rewritten:

"§ 15A-1374. Conditions of parole.

(a) In General. – The Post-Release Supervision and Parole Commission may in its discretion impose conditions of parole it believes reasonably necessary to insure that the parolee will lead a law-abiding life or to assist him to do so. The Commission must provide as an express condition of every parole that the parolee not commit another crime during the period for which the parole remains subject to revocation. When the Commission releases a person on parole, it must give him a written statement of the conditions on which he is being released.

...

(b1) Mandatory Satellite-Based Monitoring Required as Condition of Parole for Certain Offenders. – If a parolee is in a category described by G.S. 14-208.40(a)(1) or ~~G.S. 14-208.40(a)(2)~~, G.S. 14-208.40(a)(2) and based on the Division of Adult Correction and Juvenile Justice's risk assessment program requires the highest possible level of supervision and monitoring, the Commission must require as a condition of parole that the parolee submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.
...."

SECTION 18.(o) The Division of Adult Correction and Juvenile Justice shall provide each elected District Attorney a list of the individuals that reside in a county in that District Attorney's district that is subject to State v. Grady, 831 S.E. 2d 542 (NC 2019), decided August 16, 2019, namely all individuals in the same category as the defendant, Mr. Grady: individuals subject to mandatory lifetime satellite-based monitoring based solely on their status as a statutorily defined "recidivist" who have completed their prison sentences and are no longer supervised by the State through probation, parole, or post-release supervision. An elected District Attorney must decide to handle each case or have the Attorney General handle the case. If requested by an elected District Attorney, the Attorney General shall make a preliminary determination whether the recidivist subject to State v. Grady, may meet any requirement to enroll in a satellite-based monitoring program other than being a recidivist, and represent the State in any proceedings created by this section. Each District Attorney or Attorney General shall review the determination for every one of the class members. If the District Attorney or Attorney General makes a preliminary determination that the individual may meet any requirement to enroll in a satellite-based monitoring program other than being a recidivist, they shall notify the person and the sheriff in the county where the individual resides. The District Attorney or Attorney General may petition the court in that county for a hearing to have a judge determine if an individual subject to State v. Grady, 831 S.E. 2d 542 (NC 2019), meets the criteria for satellite-based monitoring consistent with G.S. 14-208.40A, as amended by this act.

SECTION 18.(p) Subsection (b) of this section applies to satellite-based monitoring determinations on or after December 1, 2021, and includes felony convictions obtained before, on, or after that date. Subsection (i) of this section becomes effective December 1, 2021, and applies to any individual required to enroll in satellite-based monitoring for life on or after that date. Subsection (o) of this section becomes effective December 1, 2021, and applies to any individual required to enroll in the satellite-based monitoring program based solely on being a "recidivist" on or after that date. The remainder of this section becomes effective December 1, 2021, and applies to satellite-based monitoring determinations on or after that date.

PART XIX. PROTECTIONS FOR LAW ENFORCEMENT OFFICERS

SECTION 19.(a) G.S. 14-223 reads as rewritten:

"§ 14-223. Resisting officers.

(a) If any person shall willfully and unlawfully resist, delay or obstruct a public officer in discharging or attempting to discharge ~~a duty of his office, he shall be an official duty,~~ the person is guilty of a Class 2 misdemeanor.

(b) If any person shall willfully and unlawfully resist, delay, or obstruct a public officer in discharging or attempting to discharge an official duty, and the resistance, delay, or obstruction is the proximate cause of a public officer's serious injury, the person is guilty of a Class I felony.

(c) If any person shall willfully and unlawfully resist, delay, or obstruct a public officer in discharging or attempting to discharge an official duty, and the resistance, delay, or obstruction is the proximate cause of a public officer's serious bodily injury, the person is guilty of a Class F felony.

(d) "Serious bodily injury" is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition

that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization."

SECTION 19.(b) In order to raise public awareness about resisting, delaying, and obstructing law enforcement officers and encourage North Carolina residents to interact with law enforcement officers safely, the Department of Public Safety shall create a targeted social media campaign and television commercials that address the concerns of not resisting arrest and raising public awareness about resisting, delaying, and obstructing law enforcement officers. DPS shall also make available on its internet website a public service announcement containing legally accurate information regarding the public's responsibilities during traffic stops and other interactions with law enforcement.

SECTION 19.(c) The Department of Public Safety shall provide to the Division of Motor Vehicles an internet link to the public service announcement authorized by subsection (b) of this section, which the Division of Motor Vehicles shall make available on its internet website. In addition, the Division of Motor Vehicles shall broadcast the public service announcement authorized by subsection (b) of this section on monitors at drivers license office locations across the State.

SECTION 19.(d) Subsection (a) of this section becomes effective December 1, 2021, and applies to offenses committed on or after that date. The remainder of this section is effective when it becomes law.

PART XX. ESTABLISH CRIMINAL RECODIFICATION WORKING GROUP

SECTION 20.(a) There is created the Bipartisan North Carolina Legislative Working Group on Criminal Law Recodification (Working Group). The purpose of the Working Group is to make recommendations to the General Assembly regarding a streamlined, comprehensive, orderly, and principled criminal code which includes all common law, statutory, regulatory, and ordinance crimes.

SECTION 20.(b) The Working Group shall be comprised of nine members selected as follows:

- (1) Two senators who are members of the majority party appointed by the President Pro Tempore of the Senate.
- (2) Two senators who are members of the minority party appointed by the Minority Leader of the Senate.
- (3) Two representatives who are members of the majority party appointed by the Speaker of the House of Representatives.
- (4) Two representatives who are members of the minority party appointed by the Minority Leader of the House of Representatives.
- (5) One individual appointed jointly by the President Pro Tempore of the Senate and the Speaker of the House of Representatives. This individual shall have served at least six years as a member of the General Assembly and shall serve as the chair of the Working Group.

SECTION 20.(c) The Working Group shall solicit comments and feedback from the public, as well as from all of the following:

- (1) The Administrative Office of the Courts.
- (2) The Attorney General.
- (3) The Conference of District Attorneys.
- (4) Indigent Defense Services.
- (5) The North Carolina Sheriffs' Association.
- (6) The North Carolina Association of Chiefs of Police.
- (7) The North Carolina Police Benevolent Association.
- (8) The North Carolina League of Municipalities.
- (9) The North Carolina Association of County Commissioners.

SECTION 20.(d) All appointments to the Working Group shall be made no later than 30 days after this act becomes law. Vacancies on the Working Group shall be filled by the appointing authority. The Working Group, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them and the power to subpoena witnesses.

SECTION 20.(e) The Working Group shall meet upon the call of the chair but at least monthly beginning no later than September 15, 2021. A majority of the voting members shall constitute a quorum. Members shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1 or G.S. 138-5, as appropriate. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to monitor and provide technical assistance to the Working Group; provided, however, legislative staff shall not be made available at times when the 2021 General Assembly is in session. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Working Group. The Working Group shall terminate on December 31, 2022.

SECTION 20.(f) The Working Group shall establish general principles which shall, at a minimum, provide for all of the following:

- (1) Incorporate existing statutory and common law offenses into Chapter 14 of the General Statutes, harmonizing additions with current Chapter content.
- (2) Apply consistent terminology across statutes and define all terminology.
- (3) Specify the required mental state or that an offense is a strict liability crime.
- (4) Eliminate redundant crimes and multiple punishment for the same conduct.
- (5) Simplify offense numbering.
- (6) Eliminate or modify unconstitutional provisions to ensure lawfulness.
- (7) Eliminate outdated laws.
- (8) Apply consistent, logical offense grading, with advice from the North Carolina Sentencing Policy and Advisory Commission.

SECTION 20.(g) The Working Group shall provide the following deliverables:

- (1) For common law crimes and crimes included in the North Carolina General Statutes:
 - a. Create a database of all statutory and common law crimes, including statute number or common law designation; offense short title; elements; link to the statute; punishment; special and key features; frequency of charging, if available; and any proposed changes and the status of those changes in order to track decisions by the Working Group.
 - b. Draft legislation amending, recodifying, or proposing changes to North Carolina criminal statutes using a format that is consistent with drafting conventions used by the North Carolina General Assembly, as directed by the Working Group.
- (2) For crimes created by local ordinances:
 - a. Create a database of ordinance offenses, including ordinance title, general description, elements, punishment, and key feature coding. The Working Group will sample ordinances from diverse jurisdictions or review all, as time allows.
 - b. Report on common ordinance crimes, including charging data, if available, and including presentation of a range of policy options for addressing ordinance crimes consistent with the Working Group's goals.

- c. Draft legislation using a format that is consistent with drafting conventions used by the North Carolina General Assembly, as directed by the Working Group.
- (3) For crimes created by administrative boards and bodies:
 - a. Create a database of all crimes created by administrative boards and bodies that make it a crime to violate any regulation created by an administrative board or body, with exemplary regulations and punishment levels.
 - b. Report on policy options for addressing regulatory crimes consistent with the Working Group's goals.
 - c. Draft legislation using a format that is consistent with drafting conventions used by the North Carolina General Assembly, as directed by the Working Group.

PART XXI. AMEND THE LAW TO PROVIDE IMMEDIATE DISCLOSURE OF BODY-WORN CAMERA RECORDINGS RELATED TO DEATH OR SERIOUS BODILY INJURY

SECTION 21.(a) G.S. 132-1.4A reads as rewritten:

"§ 132-1.4A. Law enforcement agency recordings.

- (a) Definitions. – The following definitions apply in this section:
 - (1) Body-worn camera. – An operational video or digital camera or other electronic device, including a microphone or other mechanism for allowing audio capture, affixed to the uniform or person of law enforcement agency personnel and positioned in a way that allows the camera or device to capture interactions the law enforcement agency personnel has with others.
 - (2) Custodial law enforcement agency. – The law enforcement agency that owns or leases or whose personnel operates the equipment that created the recording at the time the recording was made.
 - (3) Dashboard camera. – A device or system installed or used in a law enforcement agency vehicle that electronically records images or audio depicting interaction with others by law enforcement agency personnel. This term does not include body-worn cameras.
 - (4) Disclose or disclosure. – To make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the custodial law enforcement agency. This term does not include the release of a recording.
 - (5) Personal representative. – A parent, court-appointed guardian, spouse, or ~~attorney~~ attorney licensed in North Carolina of a person whose image or voice is in the recording. If a person whose image or voice is in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's ~~attorney;~~ attorney licensed in North Carolina; or the parent or guardian of a surviving minor child of the deceased.
 - (6) Recording. – A visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses.
 - (7) Release. – To provide a copy of a recording.

(8) Serious bodily injury. – A bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

(b) Public Record and Personnel Record Classification. – Recordings are not public records as defined by G.S. 132-1. Recordings are not personnel records as defined in Part 7 of Chapter 126 of the General Statutes, G.S. 160A-168, or G.S. 153A-98.

(b1) Immediate Disclosure. – When requested by submission of the notarized form described in subsection (b2) of this section to the head of a law enforcement agency, any portion of a recording in the custody of a law enforcement agency which depicts a death or serious bodily injury shall, upon order of the court pursuant to subsection (b3) of this section, be disclosed to a personal representative of the deceased, the injured individual, or a personal representative on behalf of the injured individual. Any disclosure ordered by the court pursuant to subsection (b3) of this section shall be done by the agency in a private setting. A person who receives disclosure as ordered by the court pursuant to subsection (b3) of this section shall not record or copy the recording. Except as provided in subsection (b3) of this section, the portion of the recording relevant to the death or serious bodily injury shall not be edited or redacted.

(b2) Notarized Form. – A person requesting disclosure pursuant to subsection (b1) of this section must submit a signed and notarized form provided by the law enforcement agency. The form shall be developed by the Administrative Office of the Courts and shall include notice that, if disclosed, the recording may not be recorded or copied, or if unlawfully recorded or copied may not be knowingly disseminated, and notice of the criminal penalties provided in subsection (b4) of this section.

(b3) Immediate Disclosure Review. – No later than three business days from receipt of the notarized form requesting immediate disclosure pursuant to subsection (b1) of this section, a law enforcement agency shall file a petition in the superior court in any county where any portion of the recording was made for issuance of a court order regarding disclosure of the recording requested pursuant to subsection (b1) of this section and shall also deliver a copy of the petition and a copy of the recording, which shall remain confidential unless the court issues an order of disclosure pursuant to this section, to the senior resident superior court judge for that superior court district or their designee. There shall be no fee for filing the petition. The court shall conduct an in-camera review of the recording and shall enter an order within seven business days of the filing of the petition instructing that the recording be (i) immediately disclosed without editing or redaction; (ii) immediately disclosed with editing or redaction; (iii) disclosed at a later date, with or without editing or redaction; or (iv) not disclosed to the person or persons seeking disclosure. In determining whether the recording may be disclosed pursuant to this section, the court shall consider the following factors:

- (1) If the person requesting disclosure of the recording is a person authorized to receive disclosure pursuant to subsection (c) of this section.
- (2) If the recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) If disclosure would reveal information regarding a person that is of a highly sensitive and personal nature.
- (4) If disclosure may harm the reputation or jeopardize the safety of a person.
- (5) If disclosure would create a serious threat to the fair, impartial, and orderly administration of justice.
- (6) If confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any

proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the portion of the recording requested to be disclosed and the head of that person's employing law enforcement agency, (iii) the District Attorney, (iv) the investigating law enforcement agency, and (v) the party requesting the disclosure. The court may order any conditions or restrictions on the disclosure that the court deems appropriate.

Petitions filed pursuant to this subsection shall be scheduled for hearing as soon as practicable, and the court shall issue an order pursuant to the provisions of this subsection no later than seven business days after the filing of the petition. Any subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

If disclosure of a recording is denied based on subdivision (6) of this subsection, the court shall schedule a subsequent hearing, to be held no more than 20 business days after the issuance of the order, to reconsider whether the recording should be disclosed.

(b4) Any person who willfully records, copies, or attempts to record or copy a recording disclosed pursuant to subsection (b1) of this section shall be guilty of a Class 1 misdemeanor. Any person who knowingly disseminates a recording or a copy of a recording disclosed pursuant to subsection (b1) of this section is guilty of a Class I felony.

(c) Disclosure; General. – Recordings in the custody of a law enforcement agency shall be disclosed only as provided by this section. Recordings depicting a death or serious bodily injury shall only be disclosed as provided in subsections (b1) through (b3) of this section.

A person requesting disclosure of a recording must make a written request to the head of the custodial law enforcement agency that states the date and approximate time of the activity captured in the recording or otherwise identifies the activity with reasonable particularity sufficient to identify the recording to which the request refers.

The head of the custodial law enforcement agency may only disclose a recording to the following:

- (1) A person whose image or voice is in the recording.
- (2) A personal representative of an adult person whose image or voice is in the recording, if the adult person has consented to the disclosure.
- (3) A personal representative of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.
- (4) A personal representative of a deceased person whose image or voice is in the recording.
- (5) A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.

When disclosing the recording, the law enforcement agency shall disclose only those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording.

...."

SECTION 21.(b) No later than the effective date of this section, the Administrative Office of the Courts shall develop and make available to all law enforcement agencies the following forms:

- (1) A signed and notarized request for immediate disclosure as required by G.S. 132-1.4A(b1) and (b2) as enacted by subsection (a) of this section.
- (2) A petition for use by law enforcement agencies pursuant to G.S. 132-1.4A(b3) as enacted by subsection (a) of this section.

SECTION 21.(c) This section becomes effective December 1, 2021, and applies to all requests made on or after that date for disclosure of a recording.

PART XXII. SAVINGS CLAUSE, SEVERABILITY CLAUSE, AND EFFECTIVE DATE

SECTION 22.(a) If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 22.(b) 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 22.(c) Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of August, 2021.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 2:47 p.m. this 2nd day of September, 2021