



SENATE BILL 141: Law Enforcement/Other Changes

2011-2012 General Assembly

Committee:	Rules, Calendar, and Operations of the House	Date:	June 18, 2012
Introduced by:	Sens. Apodaca, Meredith	Prepared by:	Kory Goldsmith
Analysis of:	PCS to Second Edition S141-CSRC-66		Committee Counsel

SUMMARY: *This Proposed Committee Substitute for SB141 would do the following: create two new felony first degree trespass offenses; require assignment of motions of appropriate relief by senior resident superior court judges and chief district court judges, modify the current law regarding empowerment of a judge to hear a motion for appropriate relief filed more than 10 days after the verdict by requiring that the judge also be assigned to hear the motion, establish a time-frame applicable to non-capital cases for the assignment, review, hearing, and ruling of a motion for appropriate relief; amend the procedure for immediate civil license revocations for provisional licensees charged with certain criminal moving violations; increase the benchmark amount that triggers certain additional steps the Lottery Commission must take when letting contracts; modify a conflict of interest provision related to Lottery Commission contracts; and clarify the changes to Payable on Death contracts enacted last year did not change the process for entering into those contracts.*

CURRENT LAW: First Degree Trespass - First degree trespass is punishable under G.S. 14-159.12 as a Class 2 misdemeanor. The penalty range for a Class 2 misdemeanor offense is as follows: (i) 1- 30 days of community punishment for a person with no prior convictions, (ii) 1-45 days of community punishment or intermediate punishment in the discretion of the court for a person with one to four prior convictions, and (iii) 1-60 days of community punishment, intermediate punishment, or active punishment in the discretion of the court for a person with five or more prior convictions.

Section 1 of the PCS amends G.S. 14-159.12 to do the following:

- Make first degree trespass a Class I felony when the trespass occurs on the premises of certain types of critical infrastructure. Critical infrastructure is described as follows: (i) certain electric power generating or transmitting facilities or stations owned or operated by an electric power supplier as defined in G.S. 62-133.8(a)(3); (ii) a dam or reservoir used by an electric power supplier to generate hydroelectric power; (iii) various public water system facilities; and (iv) various types of liquefied natural gas storage or propane-air facilities.
- Make first degree trespass a Class H felony if the trespass occurs on the premises of any of the critical infrastructure described above and the offense also includes any of the following elements: (i) the offender intended to disrupt the normal operation on any of the critical infrastructure facilities, (ii) the offense involved an act that placed either the offender or others on the premises at risk of serious bodily injury, or (iii) the offense is committed by three or more persons acting in concert.
- The sentence ranges for each level of Class I and Class H felonies are set out below:

PRIOR RECORD LEVEL

	I 0-1 Pt	II 2-5 Pts	III 6-9 Pts	IV 10-13 Pts	V 14-17 Pts	VI 18+ Pts	
	C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated

CURRENT LAW: Motions for Appropriate Relief (MAR)

Judges empowered to consider a motion for appropriate relief

G.S. 15A-1413 provides which judges are empowered to hear MARs and distinguishes the authority of a judge to hear a MAR based on whether it is filed within 10 days of the judgment (See G.S. 15A-1414) or more than 10 days after the judgment (See G.S. 15A-1415.)

G.S. 15A-1413(b) authorizes the trial judge to consider a MAR filed under G.S. 15A-1414, even if that judge is in another district or the judge's commission has expired. The statute does not specifically address who may hear the motion if the judge is unavailable, but presumably the matter may be heard by any judge empowered to act in the district where the judgment was entered. (See Motions for Appropriate Relief, by Jessica Smith, Administration of Justice Bulletin 2010/03/June 2010).

G.S. 15A-1413(a) provides that a MAR filed under G.S. 15A-1415 may be considered by any judge empowered to act over criminal matters in the district in which the trial was held.

G.S. 15A-1413(c) provides that if a MAR is made before a judge who did not hear the case, the judge may, if practicable, refer all or part of the MAR to the judge who presided at the trial. "Practicable" is not a defined term.

Judicial officials' duties upon filing of MAR in noncapital case

G.S. 15A-1420(b1)(2) requires the Clerk of court, upon receipt of a MAR in a noncapital case to place it on the criminal docket and promptly bring the MAR to the attention of either the resident judge or the judge holding court in the county or district. In noncapital cases, the resident judge or judge holding court must review the MAR and enter an order regarding the following:

- Whether defendant should be allowed to proceed without payment of costs
- Appointment of counsel
- Direct State, if necessary, to file an answer

If a hearing is necessary, the judge must calendar the case for hearing "without unnecessary delay." Current law does not establish a specific time frame for calendaring of a hearing or ruling on a MAR in a noncapital case.

Section 2 of the PCS does the following :

Judges empowered to consider a motion for appropriate relief and assignment of MAR

- Continues to provide that only the trial judge is empowered to consider a MAR filed under G.S. 15A-1414, unless that judge is unavailable; but, clarifies that if the trial judge is unavailable, the senior resident superior court judge (Senior Resident) or chief district court

judge (Chief) shall assign the MAR to any judge authorized to act in criminal court in the district in which the MAR is filed.

- Provides that a judge empowered to act in criminal matters in the district in which a MAR is filed may consider a MAR only if assigned to do so by the Senior Resident or Chief judge.
- Provides that all MARs shall be referred to either the Senior Resident or Chief judge for assignment. A MAR filed under G.S. 15A-1414 shall be assigned to the original trial judge as provided above. A MAR filed under G.S. 15A-1415 must be assigned, when practicable, to the judge who presided at trial, accepted the guilty plea, or imposed the sentence depending on the nature of the relief sought; otherwise the assignment is in the discretion of the Senior Resident or Chief judge.

Judicial officials' duties upon filing of MAR in noncapital case; establishment of certain specific deadlines and permissible extensions of time; failure to comply with deadlines

- Requires the clerk to place MARs on the criminal docket and promptly refer to the Senior Resident or Chief judge for assignment.
- Creates a time-frame within which a MAR filed in a noncapital case must be assigned, an initial review completed, a hearing calendared, and a ruling on the motion entered. An extension of time, not to exceed 30 days, may be granted to comply with any deadline set out in the time-frame, but no subsequent request to extend the deadline shall be granted without a written order containing detailed findings of extraordinary circumstances. The Senior Resident or Chief judge may also grant an extension of time to a judge assigned to consider a MAR to comply with a deadline, but no subsequent extension may be granted without a written order containing detailed findings of extraordinary circumstances.
- Provides that failure of the court to comply with the deadlines is grounds for the party filing the MAR to petition the Senior Resident or Chief judge for reassignment of the MAR and also entitles the party to seek a writ of mandamus to obtain compliance with the deadline.
- Provides that failure to meet a deadline imposed under this statute is not a ground for the summary granting of a MAR or other summary relief, including release of the prisoner.
- The time-frame established by the Section is as follows:
 - Within 30 days of filing of MAR.....Assignment by Senior Resident/Chief Judge
 - Within 30 days after assignmentInitial review completed by assigned judgeInitial review must address all of the following:
 - Determine whether MAR should be dismissed for lack of merit
 - Direct State, if necessary to file an answer within 30 days of the date of the initial review order
 - Order hearing and dispense with requirement that State file an answer
 - Determine whether defendant shall be allowed to proceed without costs
 - Determine whether counsel shall be appointed
 - Calendar a hearing
 - Calendar evidentiary hearing to be held within 90 days from issuance of initial review order, unless State must file an answer, then within 150 days
 - Calendar non-evidentiary hearing to be held within 60 days from issuance of initial review order, unless State must file an answer, then within 120 days
- Notice of hearingNo less than 5 days prior to date of hearing
- Within 60 days of conclusion of hearing.....Court must rule on MAR

Senate PCS 141

Page 4

CURRENT LAW: Civil license revocation for provisional licensees charged with criminal moving violations.

An immediate civil license revocation for provisional licensees charged with criminal moving violations was enacted in 2011. This law requires that law enforcement officers take the provisional licensee into custody and before a magistrate for a determination of probable cause and an immediate 30 day civil license revocation.

Section 3 of the PCS does the following:

- Gives discretion back to the law enforcement officer on whether to arrest the provisional licensee or issue a citation for the offense.
- Amends the procedure for issuance of the 30 day civil license revocation to allow for the possibility that the law enforcement officer may choose to issue a citation and also to provide for appeal of the revocation.

CURRENT LAW: Lottery Commission Contracts.

In general, the Lottery Commission must follow the same procedures for letting contracts for services, goods, equipment and apparatus as other State agencies. If a contract is for more than \$90,000, the Commission must also put in place some additional safeguards such as making sure it is not doing business with a lottery vender who has been convicted of a State or federal felony or any gambling offense within 10 years of letting the contract and the Commission has investigated the overall business practices and ethical standards of the venders bidding on the contract. In addition, before any contract is awarded, regardless of the amount, the Commission must do a thorough background check on all shareholders with a five percent (5%) or more interest in either the contractor or a parent or subsidiary corporation of the potential contractor.

Section 4 of the PCS increases the benchmark that triggers the additional safeguards from \$90,000 to \$300,000. It also clarifies that for the purposes of shareholder background checks, the law only applies to natural persons or those individuals with the ability to make operating decisions for the contractor or the parent company.

CURRENT LAW: Payable on Death Accounts.

During the 2011 Session, the General Assembly repealed four statutes authorizing payable on death accounts (each applying to a different type of financial institution) and enacted four new statutes authorizing similar accounts at those institutions. The changes made business entities "allowable beneficiaries" of the accounts. Under the previous law, the beneficiary had to be a human being.

Section 5 of the PCS attempts to clarify that although certain wording in the statutes was changed, the procedure for establishing a payable on death account remains the same.

EFFECTIVE DATE: Section 1 of this act becomes effective September 1, 2012, and applies to offenses committed on or after that date. Section 2 of this act becomes effective December 1, 2012, and applies to motions for appropriate relief filed on or after that date. Section 3 of this act becomes effective on December 1, 2012, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

Susan Sitze and Emily Johnson, staff attorneys substantially contributed to this summary.

S141-SMRC-73(CSRC-66) v2