

# 2008 Sausage Report – Fall Edition

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“The less people know about how sausages and laws are made, the better they will sleep at night.”  
-- German Chancellor Otto von Bismarck

The State Legislature has been busy creating new laws and updating old ones. The lawmakers attempted to regulate three big problem groups in NC: sex offenders, gangs, and wildlife law violators from other states. Here is a roundup of 2008 legislation that you need to know about:

#### Effective July 11, 2008

1. Session Law 2008-91 provides that the law, which says ATV users, must wear eye protection and a safety helmet does not apply to a person 16 years old or older who is lawfully using the ATV on an ocean beach area.

I almost left this one out of the report since there are no ocean beaches in High Point, but the way its been raining this week I figured I better err on the side of caution.

#### Effective October 1, 2008

2. In the “7-11 Cashiers Can’t Read”<sup>1</sup> Act, driver’s licenses and special identification cards issued to people under 21 years of age will be in a vertical format instead of the typical horizontal format. This way, cashiers don’t have to do math when looking at the date of birth and your fake id will not be scrutinized so carefully. It’s a win-win, really. (Session Law 2008-217)

3. N.C.G.S. 20-135.2B makes it an infraction to transport a person under 12 years of age in an open bed or open cargo area of a vehicle. Effective October 1<sup>st</sup> that age limit is raised to 16 years old.

4. Apparently, there are people coming to our state and violating our wildlife laws.<sup>2</sup> Session Law 2008-120 creates an Interstate Wildlife Violator Compact which among other things requires an officer to write a citation for a wildlife offense committed by a person who is a resident in another member state instead of requiring collateral to be

<sup>1</sup> Are there any 7-11s around anymore? By the way, the law wasn’t really called that. I made that up. Don’t call it this to your law enforcement buddies from other jurisdictions – you’ll just look foolish.

<sup>2</sup> I picture Yosemite Sam saying: “Dance, varmint!” Many of you are too young to remember Yosemite Sam – I think that’s sad. But I digress.

posted (with exceptions). It also makes it a Class 1 misdemeanor under N.C.G.S. 113-300.8 to hunt, fish, trap, possess, or transport wildlife or possess a license to do any of those things if the defendant's hunting, fishing, trapping, possessing, or transporting license (whew!) is revoked.

Effective December 1, 2008

5. N.C.G.S. 14-144 made injuring houses, churches, fences, or walls a Class 2 misdemeanor. You probably never used this statute since N.C.G.S. 14-127 made injury to real property (which includes houses, churches, fences, and walls generally) a Class 1 misdemeanor. G.S. 14-144 may be useful now, however because it makes it a Class I felony if the damage to the house, church, fence or wall is greater than \$5,000.

6. Session Law 2008-93 amended G.S. 50B-4.1(f) to provide that it is a Class H felony when a person violates a valid protective order after having been previously convicted of two offenses under Chapter 50B. The current law requires proof of three prior convictions. Keep in mind that even though the effective date is December 1, 2008, the prior convictions can be before that date.

7. New Sex Offender Laws: New G.S. 14-27.2A (rape of child by adult offender) prohibits vaginal intercourse by a person at least 18 years old with a victim under 13 years old. The offense is a Class B1 felony sentenced under the Structured Sentencing Act except the defendant must receive an active punishment of at least 300 months and mandatory satellite monitoring for life. The court may give the defendant life without parole if it finds that the nature of the offense and harm inflicted go beyond that of normal crimes of this type.

New G.S. 14-27.4A (sexual offense with child by adult offender) contains the same sentencing provisions as above but covers all other sexual acts.

Punishment has been increased for several sex crimes:

- G.S. 14-190.16 (1<sup>st</sup> degree sexual exploitation of minor) from Class D to Class C felony
- G.S. 14-190.17 (2<sup>nd</sup> degree sexual exploitation of minor) from Class F to Class E felony
- G.S. 14-190.17A (3<sup>rd</sup> degree sexual exploitation of minor) from Class I to Class H felony
- G.S. 14-190.18 (promoting prostitution of minor) from Class D to Class C felony

Sex Offender Registration Changes

New G.S. 14-208.18 makes it a Class H felony for a person required to register as a sex offender to be at any of the following locations:

- On the premises of a place intended primarily for use, care, or supervision of minors, including schools, children's museums, childcare centers, nurseries, and playgrounds.
- Within 300 feet of a place like those above that is located on premises not intended primarily for the use, care or supervision of

minors, such as those located in malls, shopping centers, or other property open to the general public.

- At any place where minors gather for regularly scheduled educational, recreations, or social programs.

Note: There are some limited exceptions to this new offense contained in the statute.

Sex Offenders And Computers (not a good combination!)

- G.S. 14-202.3 (solicitation of child by computer) is amended to provide that a violation of the statute is a Class G felony if either the defendant or any other person for whom the defendant was arranging the meeting actually appears at the meeting location.
- New law G.S. 14-202.5 makes it a Class I felony for a registered sex offender to access a commercial social networking website (such as Facebook, MySpace) when the sex offender knows that the site permits minor children to become members or to create or maintain personal web pages on the site.
- The legislature has made it unlawful for a registered sex offender to change his or her name (G.S. 14-202.6); required registered sex offender to provide any online identifier (screen name) that he or she intends to use and keep the registry up to date (G.S. 14-208.7(b) and 14-208.9(e)). Failure to do so will be a Class F felony under G.S. 14-208.11(a). **The online identifier sections become effective May 1, 2009 but people already registered must also provide this information no later than that date.**

Alright, enough of that unpleasantness...feel free to take a break to shower after all that – this update will still be here.

8. Our somewhat less perverted but still off-kilter defendants might be interested to know that there is a new stalking offense. G.S. 14-277.3A was created to provide that it is a Class A1 misdemeanor if a defendant willfully on more than one occasion harasses another person without legal purpose<sup>3</sup> and the defendant knows or should know that the harassment would cause a reasonable person to do any of the following:

- Fear for the person's safety or the safety of the person's immediate family or close personal associates; or
- Suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment.

The punishment is increased to a Class H felony if the defendant is under a court order, which prohibits similar behavior and increases to a Class F felony if he or she has previously been convicted of a stalking offense.

Note: The previous stalking offense in 14-277.3 is repealed effective December 1, 2008 but any charges made under that statute prior to that date are still good.

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<sup>3</sup> I'm interested to know what legal purpose to harass someone might look like.

9. New G.S. 14-306.3 makes it unlawful to promote, operate or conduct a “server-based electronic game promotion” or possess any game terminal with a display that simulates a game ordinarily played on a slot machine or video gaming machine for the purpose of promoting, operating, or conducting a “server-based electronic game promotion.” The new statute defines a server-based electronic game promotion and basically covers those games where folks were buying prepaid phone cards and being awarded “chances” at a video slot machine. If you see what you believe to be a “server-based electronic game promotion,” please do not approach, but back away slowly at the low ready position and immediately call one of our in-house revenueurs. These things must be handled by fully trained experts. They must be extremely dangerous because the legislature has made the possession of five or more of these machines a Class G felony.

10. For our hard-working Property crimes division: The legislature has abolished all common law rules providing that personal property that has become affixed to real property is not subject to a charge of larceny – from December 1<sup>st</sup> on, a person who removes or takes and carries away any property that is affixed to real property with the intent to steal the property is guilty of larceny.

11. For our Traffic Unit (also hard-working and somewhat soggy after this week): The hit and run laws have been modified again. G.S. 20-166(a) as modified will make hit and run from a crash resulting in “serious bodily injury” (same definition as Assault Inflicting Serious Bodily Injury) a Class F felony. G.S. 20-166(a1) will apply to a hit and run from a crash resulting in “injury” – this is still a Class H felony.

12. For our Gang Task Force (again...hard-working): The legislature has passed the tough sounding North Carolina Street Gang Suppression Act that does the following:

- Street gang is defined as a group of three or more persons that:
  1. Has as one of its primary activities the commission of one or more felony offenses,
  2. Has three or more members individually or collectively engaged in or who have engaged in criminal street gang activity AND
  3. May have a common name, sign, or symbol
- Makes it a Class H felony to conduct or participate in a pattern of criminal street gang activity or acquire or maintain an interest in any real or personal property through a pattern of gang activity. It is a Class F felony if the defendant acts in this way as an organizer, supervisor or manager.
- The State would have to prove it was done in furtherance of, or for the purpose of the person’s involvement in a gang and would have to show a “pattern” – (having two convictions for prior incidents of criminal street gang activity).
- It is a Class H felony to encourage participation in gang, Class F if encouraging minor to participate.

- It is a Class H felony to threaten person who is trying to get out of gang.
- A misdemeanor committed for a gang now goes up one class in punishment. A1 misdemeanors become Class I felonies.
- There are provisions for forfeiture of gang money and property and a provision declaring real property being used for gang a public nuisance.
- The new law makes it a Class E felony for any person to shoot (or “discharge a firearm” in officerspeak) from an enclosed space (car, house) toward a person not within that enclosure.
- Finally, it expands the firearm enhancement law to include all deadly weapons.

13. For parents and caregivers (maybe not so hard-working): Misdemeanor child abuse is now a Class A1 misdemeanor instead of a Class 1. New G.S. 14-318.4(a4) and (a5) provide that a parent or person providing care or supervision to a child less than 16 years old whose willful or grossly negligent omission in the care of the child shows a reckless disregard for human life is guilty of a Class E felony if the act or omission results in serious bodily injury and a Class H felony if the act or omission results in serious physical (including mental) injury.

14. For all those SROs who were calling me last year at the District Attorney’s Office about nooses (Did I mention hard-working?): G.S. 14-12.12(b) (placing burning cross) has been made applicable to any public place and 14-12.13 and 14.12.14 now include nooses. The punishment for these offenses has been increased from a Class I felony to a Class H felony. G.S. 14-3(c) now makes it a Class H felony rather than a Class I felony when a defendant commits a Class A1 or 1 misdemeanor because of the victim’s race, color, religion, nationality, or country of origin.

That’s enough for this week, I think. Exam to follow.

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