

# 2010 Sausage Report

## Illustrated Edition

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“Laws are like sausages. It is better not to see them being made.”  
-- German Chancellor Otto von Bismarck

“No man’s life, liberty or property are safe while the legislature is in session.”  
-- 1 Tucker 248, N.Y. Surr. 18<sup>1</sup>

The legislature recently wrapped up its work for the 2010 Legislative Short Session. It is referred to as a “short session” because the North Carolina legislature is set up to have regular sessions only in odd-numbered years. In a regular session, they pass a budget for two years and consider any legislation that is proposed. In even numbered years (in theory), the legislature meets only to make adjustments to the budget and according to the rules may only consider legislation that “directly and primarily” affects the budget or those bills that passed one of the legislative chambers in the regular session.<sup>2</sup> In the last several years, the short sessions have not been very short, dragging on into late July and even late August, but this year the legislators were able to get the budget amendments passed and adjourned in the early morning hours of July 10.<sup>3</sup>

But enough of this Civics lesson! Let’s look at the new laws that are important for law enforcement officers to know.

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<sup>1</sup> A very old court case from 1866. The quote was part of the opinion written by Judge Gideon J. Tucker. Apparently back then they weren’t as big on subject-verb agreement. Some of you don’t know what that means and that’s okay. The jokes are less cerebral from here on out.

<sup>2</sup> However, there are some clever ways around this rule, including taking a bill that passed one of the chambers last year and “amending” it by taking out all of the current language and replacing it with the language of the new bill. For example, “Susie’s Law,” the animal cruelty law that received a lot of press (and is covered later in this update) started out last year as a bill entitled “An Act To Allow Mutual Aid Agreements Between the State and Political Subdivisions of the State, As Recommended By The Joint Select Committee On Emergency Preparedness And Disaster Management Recovery.” That bill received little to no press in large part because no one understood the title, much less what the bill was trying to accomplish.

<sup>3</sup> Which goes to show that it takes much less time to decide how to spend your money when you don’t have any money to spend.

## New Domestic Violence Laws

The legislature enacted N.C.G.S. 50B-4.1(g1) to make it a Class H felony for any person who is subject to a valid protective order to enter property operated as a safe house or haven for victims of domestic violence where a person protected under the order is residing. This is a crime regardless of whether the person protected under the order was actually present at the time the defendant entered the property, so long as they are residing there.

In those domestic violence cases that require a judge to set the conditions of pre-trial release rather than a magistrate,<sup>4</sup> the legislature has amended G.S. 15A-534.1(a) to require the judge to direct a law enforcement officer or district attorney to provide a criminal history report for the defendant and the judge must consider this criminal history when setting conditions of release.<sup>5</sup>

## Electronic Sweepstakes Ban: New N.C.G.S. 14-306.4

Effective December 1<sup>st</sup>, it will be unlawful for any person to operate or place into operation, an electronic machine or device to either conduct or promote a sweepstakes<sup>6</sup> through the use of an “entertaining display,”<sup>7</sup> including the entry process or the reveal of a prize. An entertaining display is defined in the statute as “visual information, capable of being seen by a sweepstakes entrant, that takes the form of actual game play, or simulated game play, such as, by way of illustration and not exclusion:<sup>8</sup>” a video poker or other card game, video bingo/craps/keno/lotto, any “video game based on or involving the random or chance matching of different pictures, words, numbers, or symbols not dependent on the skill or dexterity of the player” and “any other video game not dependent on skill or dexterity that is played while revealing a prize as the result of an entry into a sweepstakes.”

The first offense is punished as a Class 1 misdemeanor, the second offense is a Class H felony, and a third or subsequent offense is a Class G felony. The legislation also states that each violation is a separate offense, and allows law enforcement officers to seize any of these illegal gaming items.

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<sup>4</sup> This is known as the 48 hour law because it provides that the defendant may be held up to 48 hours if it takes that long to have a first appearance in front of a judge.

<sup>5</sup> This law can be filed under “W” for “Why were judges not considering criminal history when setting conditions of release in domestic violence cases?” I’m hoping that this law was unnecessary. Call me naïve.

<sup>6</sup> “Sweepstakes” is defined as “any game, advertising scheme or plan, or other promotion, which, with or without payment of any consideration, a person may enter to win or become eligible to receive any prize, the determination of which is based upon chance.”

<sup>7</sup> When the legislature uses terms like “entertaining display,” the jokes almost write themselves. I picture Homer Simpson types, easily distracted by shiny objects, mesmerized by the entertaining display of a video poker machine.

<sup>8</sup> Which is to say, we want to outlaw even the ones you haven’t even dreamed up yet.

### “Susie’s Law:” Animal Cruelty changes

“Susie” is a mixed-breed pit bull dog who in August of 2009 was beaten and burned by a 21-year old in Greensboro. When the defendant was sentenced to only 6 to 8 months in jail<sup>9</sup> for the crime, animal rights activists used Susie as a rallying point to urge the legislature to increase the penalties for animal cruelty. Unable to resist the “bite” of this tragic story, the legislature quickly acted to reclassify two animal cruelty crimes.

Effective December 1, 2010, felony animal cruelty under G.S. 14-360(b) has been changed from a Class I felony to a Class H felony. In addition, maliciously killing an animal by intentional deprivation of necessary sustenance will be a Class H felony rather than a Class A1 misdemeanor under G.S. 14-360(a1). Susie thanks you for your support:<sup>10</sup>



### Motor Vehicle Law Changes

There were only a few minor<sup>11</sup> changes to our motor vehicle laws during this session. The following changes are effective December 1, 2010:

1. As an exception to G.S. 20-130.1 which prohibits the use of red or blue lights on vehicles, an Incident Management Assistance Patrol<sup>12</sup> vehicle may now have rear facing red-lights in use while stopped for the purpose of providing assistance.<sup>13</sup>

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<sup>9</sup> The story was actually a lot more complicated than this. The 6 to 8 month prison sentence was for the charge of “burning personal property,” a Class H felony. The judge was only able to give probation on the animal cruelty charge, which was the injustice that proponents of the new law wanted to correct. What was downplayed in all this was that the defendant also pled guilty to indecent liberties with a minor, breaking and entering, obtaining property by false pretenses, and marijuana charges. In all, he is serving 21 to 26 months in prison followed by a lengthy term of probation, so it’s not as if he got off scot free.

<sup>10</sup> Speaking of dogs (and it’s safe to say that this update is quickly going to the dogs), if Goofy and Pluto are both dogs, why is Goofy considered the dumb one when he can walk on two legs and talk?

<sup>11</sup> One might even call them “Lilliputian,” especially if someone had challenged you to include that word in this week’s legal update.

<sup>12</sup> These could be called “IMAP” vehicles, but that would probably infringe on a copyright held by Apple.

<sup>13</sup> Wait – don’t ALL vehicles have rear-facing red lights when stopped? Just kidding – the statute is not talking about brake lights.

2. The “move-over law” (G.S. 20-157(f)) now requires you to also move over a lane or slow down for “a vehicle being used to restore electric utility service due to an unplanned event” when it is operating an amber colored light.
3. Remember the law passed last year which made it an infraction to cover a number or registration renewal sticker on a license tag but stated that you could only write warning tickets for a violation?<sup>14</sup> Well, starting December 1<sup>st</sup>, you can now write citations for this offense and the legislature has also made it a violation to cover a license tag “with any frame or transparent clear or color-tinted cover that makes a number or letter,” the State name, or a number or month on the registration sticker illegible. This is also an infraction under G.S. 20-63(g).

### Public Records Law Changes

Under G.S. 160A-168,<sup>15</sup> most of what is contained within a city employee’s personnel file is not a public record and is confidential. There are some exceptions set out in the statute, and these have been modified this year to make two new types of information public effective October 1, 2010. First, with regards to salary, the current law required agencies to make public only the current salary and the date and amount of the most recent increase or decrease. The new law will generally make public the salary history of an employee, with every increase and decrease being public record.

Second, the new law changes what is public record concerning the promotion or discipline of an employee. Under current law, only the date and type<sup>16</sup> (promotion, demotion, suspension, etc.) of the most recent change in position was public record. Under the new law, agencies are specifically required to disclose (upon request) the date and type of each action, not just the most recent. In addition, for promotions, a general description of the reason for each promotion is a matter of public record and for dismissals, the public will have access to “a copy of the written notice of the final decision” of the agency “setting forth the specific acts or omissions that are the basis of the dismissal.”<sup>17</sup> The new law will apply to current and former employees.

### Convicted Felons As Sheriffs Constitutional Amendment

The legislature has proposed an amendment to the State Constitution that would make a person convicted of a felony ineligible from ever serving as a Sheriff in North

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<sup>14</sup> If not, go read the “2009 Sausage Report – Part One,” 2 L.Q.O.W. 20 (09/11/09) immediately. We’ll wait for you.

<sup>15</sup> For those of you that read this from other agencies, G.S. 160A-168 applies to cities but there are other statutes that apply to state agencies and sheriff’s offices that have also been amended in the same fashion this year. As always, check with your agency’s legal advisor for more details.

<sup>16</sup> For the sake of completeness, a literal reading of the current statute seems to require only the date and not the type, but that is also clarified in the new statute.

<sup>17</sup> Lots of questions remain to be answered. Is the agency now under an obligation to document the reasons for promotion or dismissal if they don’t create those records presently? Does the new law now make public those records that were created before its effective date of October 1 or does it only apply to records created on or after that date? I don’t know. You bust the bad guys and I’ll worry about these questions.

Carolina. You'll have a chance to vote on this in the November election. If a majority of voters vote in favor, the amendment will pass.

### Restoration of Firearm Possession Rights

In response to a N.C. Supreme Court case from last year,<sup>18</sup> the legislature has set up a procedure by which someone convicted of a felony can petition to have their right to possess firearms restored. The only felons who would be eligible would be those that were convicted of a non-violent felony offense, have had their civil rights restored for at least 20 years, have been a resident of North Carolina for at least 1 year, and also have no convictions for any misdemeanors involving violence.<sup>19</sup> I am guessing that this will not apply to a whole lot of people.

For those that would be eligible, they may apply to the District Court in the county where they reside to have their possession rights restored. The Sheriff's office will handle the background check responsibilities and it will be up to a judge whether the person meets all the criteria. This law goes into effect on February 1, 2011.

### DNA Samples Taken At Time of Arrest

I will write a much fuller article on this new statute in the coming weeks, because it is far too complex to handle here, but the general idea of this new law (G.S. 15A-266.3A) is that officers will be required to take (or cause to be taken) cheek swabs for DNA of adults arrested for certain crimes after February 1, 2011.<sup>20</sup> The person taking the sample will fill out a form that will be created by the SBI and that form will be part of the case file turned over to the District Attorney's office.

The more complicated part comes later because if the case is dismissed or pled down to an offense not covered by this statute, the DNA sample will have to be expunged. There are some rules on how the SBI will be notified that this needs to be done, but prior to June 1, 2012, the person arrested will be the one responsible for applying to have the sample expunged. Again, look for a legal update devoted to this statute soon.

Finally, the law you were all really concerned about...

### Coyote Trapping

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<sup>18</sup> Britt v. North Carolina, 363 N.C. 546 (2009).

<sup>19</sup> There are some other things that would make a person ineligible, but you don't need me to go into them right now.

<sup>20</sup> This will only apply to murder/manslaughter, rape and sex offenses, specified assaults, kidnappings and human traffickings, burglary offenses, arson, armed robbery, sex offenses requiring registration, cyberstalking and stalking, as well as attempts, solicitations, or aiding and abetting any of these offenses.

The legislature has amended Chapter 113 of the General Statutes to authorize the issuance of a depredation permit<sup>21</sup> to livestock or poultry owners upon their request that will allow them to use a trap to capture coyotes. This is certainly bad news for Wile E. Coyote, who was apparently unable to rally the support that Susie the pit bull garnered.<sup>22</sup>



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<sup>21</sup> Dep-re-da-tion: (n) 1. An act of plundering and pillaging and marauding. I know what some of you are thinking - "You mean I can get a permit for pillaging?" I know what some others of you are thinking, too - "You mean I need a permit for that?"

<sup>22</sup> One thing has always bugged me about Wile E. Coyote. If he could afford to buy all that ACME crap, why didn't he just go buy himself a nice dinner?