

Current Developments in Criminal Law Webinar
Legislative Update Paper
February 23, 2024

1) Voting while Ineligible Changes – [S.L. 2023-140 \(S 747\)](#)

G.S. 163-275(a)(5) reads as rewritten:

"(5) For any person convicted of a crime which excludes the person from the right of suffrage, to vote ~~at in~~ any primary or election ~~without having been restored to~~ knowing the right of citizenship has not been restored in due course and by the method provided by law."

2) Changes to Breaking or Entering of Vehicles – [S.L. 2023-151 \(S 409\)](#)

G.S. 14-56 reads as rewritten:

"§ 14-56. Breaking or entering into or breaking out of railroad cars, motor vehicles, trailers, aircraft, boats, or other watercraft.

(a) ~~If it is unlawful for any person, with the intent to commit any felony or larceny therein, breaks or enters to break or enter any railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind, containing any goods, wares, freight, or other thing of value, or, after having committed any felony or larceny therein, breaks break out of any railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind containing any goods, wares, freight, or other thing of value, that person is guilty of a Class I felony, value.~~ It is prima facie evidence that a person entered in violation of this section if ~~he the person~~ is found unlawfully in such a railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft.

~~(a1) If any person violates subsection (a) of this section, that person is guilty of a Class H felony if both of the following conditions are met:~~

~~(1) The railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind is owned or operated by any law enforcement agency, the North Carolina National Guard, or any branch of the Armed Forces of the United States.~~

~~(2) The person knows or reasonably should know that the railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind is owned or operated by any law~~

enforcement agency, the North Carolina National Guard, or any branch of the Armed Forces of the United States.

(a2) The following classifications apply to an offense under subsection (a) of this section:

(1) An offense is a Class H felony if the goods, wares, freight, or other thing of value taken has a value exceeding one thousand five hundred dollars (\$1,500), but no more than twenty thousand dollars (\$20,000), aggregated over a 90-day period, or if all of the following conditions are met:

a. The railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind is owned or operated by any law enforcement agency, the North Carolina National Guard, or any branch of the Armed Forces of the United States.

b. The person knows or reasonably should know that the railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind is owned or operated by any law enforcement agency, the North Carolina National Guard, or any branch of the Armed Forces of the United States.

c. The offense does not involve the taking of goods, wares, freight, or any other thing of value that would be punishable under subdivision (2), (3), or (4) of this subsection.

(2) An offense is a Class G felony if the goods, wares, freight, or other thing of value taken has a value exceeding twenty thousand dollars (\$20,000), but no more than fifty thousand dollars (\$50,000), aggregated over a 90-day period.

(3) An offense is a Class F felony if the goods, wares, freight, or other thing of value taken has a value exceeding fifty thousand dollars (\$50,000), but no more than one hundred thousand dollars (\$100,000), aggregated over a 90-day period.

(4) An offense is a Class C felony if the goods, wares, freight, or other thing of value taken has a value exceeding one hundred thousand dollars (\$100,000), aggregated over a 90-day period.

(5) An offense is a Class I felony for any other offense under subsection (a) of this section that is not otherwise covered under subdivisions (1) through (4) of this subsection.

(b) It shall not be a violation of this section for any person to break or enter any railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind to provide assistance to a person inside the railroad car, motor vehicle, trailer, aircraft, boat, or watercraft of any kind if one or more of the following circumstances exist:

(1) The person acts in good faith to access the person inside the railroad car, motor vehicle, trailer, aircraft, boat, or watercraft of any kind in order to provide first aid or emergency health

care treatment or because the person inside is, or is in imminent danger of becoming unconscious, ill, or injured.

(2) It is reasonably apparent that the circumstances require prompt decisions and actions in medical, other health care, or other assistance for the person inside the railroad car, motor vehicle, trailer, aircraft, boat, or watercraft of any kind.

(3) The necessity of immediate health care treatment or removal of the person from the railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind is so reasonably apparent that any delay in the rendering of treatment or removal would seriously worsen the physical condition or endanger the life of the person.

(c) Acts occurring in more than one county that would constitute a violation of subsection (a) of this section and involve the taking of goods, wares, freight, or any other thing of value may be aggregated into an alleged violation of subsection (a) of this section. Each county where a part of the charged offense occurs has concurrent venue as described in G.S. 15A-132."

SECTION 1.(b) G.S. 14-86.1(a) reads as rewritten:

"(a) All conveyances, including vehicles, watercraft, or aircraft, used to unlawfully conceal, convey, or transport property in violation of G.S. 14-71, 14-71.1, or 14-71.2, used by any person in the commission of armed or common-law robbery, used in violation of G.S. 14-72.7, used by any person in the commission of any larceny when the value of the property taken is more than two thousand dollars (\$2,000), used by any person in the commission of an offense under G.S. 14-56, or used by any person in the commission of organized retail theft in violation of G.S. 14-86.6 shall be subject to forfeiture as provided herein, except that:

...."

SECTION 1.(c) Subsections (a) and (b) of this section become effective December 1, 2023, and apply to offenses committed on or after that date.

3) Aggregation of Certain Financial Crimes – [S.L. 2023-151 \(S 409\)](#)

SECTION 2.(a) Article 81B of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-1340.16F. Aggregation of multiple financial crime offenses.

(a) Definition. – For purposes of this section, the term "financial crime offense" means any of the following:

(1) Acts of embezzlement punishable under Article 18 of Chapter 14 of the General Statutes.

(2) Acts of false pretenses punishable under G.S. 14-100.

(3) Acts of exploitation of an older adult punishable under G.S. 14-112.2.

(b) Aggregation. – If a person is convicted of two or more of the same financial crime offenses, the financial crime offenses may be aggregated for sentencing if it is found that both of the following conditions are met:

(1) The person committed the financial crime offenses against more than one victim or in more than one county.

(2) The financial crime offenses are based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a common scheme or plan.

(c) Venue. – Each county where a part of the violations aggregated under subsection (b) of this section occurs shall have concurrent venue as described in G.S. 15A-132.

(d) Pleading. – The pleading for financial crime offenses aggregated under this section shall allege the facts set out in subsection (b) of this section and identify the financial crime offenses to which the aggregation shall apply. The pleading is sufficient if it alleges that the defendant committed the financial crime offenses against more than one victim or in more than one county and that the financial crime offenses are based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a common scheme or plan.

(e) Procedure. – The State shall prove the issues set out in subsections (b) and (f) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the financial crime offenses unless the defendant pleads guilty or no contest to the issues. If the defendant pleads guilty or no contest to the financial crime offenses but pleads not guilty to the issues set out in subsection (b) or subsection (f) of this section, then a jury shall be impaneled to determine the issues.

(f) Punishment. – If convictions for two or more of the same financial crime offenses are aggregated in accordance with this section, the court shall use the aggregated value of the money, goods, property, services, chose in action, or other thing of value when determining the level of punishment to be imposed. Notwithstanding any provision of law to the contrary, financial crime offenses aggregated under subsection (b) of this section are punishable as follows:

(1) If the aggregated value of the money, goods, property, services, chose in action, or other thing of value exceeds one thousand five hundred dollars (\$1,500), then the aggregated offenses shall be punished as one Class H felony.

(2) If the aggregated value of the money, goods, property, services, chose in action, or other thing of value exceeds twenty thousand dollars (\$20,000), then the aggregated offense shall be punished as one Class G felony.

(3) If the aggregated value of the money, goods, property, services, chose in action, or other thing of value exceeds fifty thousand dollars (\$50,000), then the aggregated offenses shall be punished as one Class F felony.

(4) If the aggregated value of the money, goods, property, services, chose in action, or other thing of value exceeds one hundred thousand dollars (\$100,000), then the aggregated offense shall be punished as one Class C felony."

SECTION 2.(b) Subsection (a) of this section becomes effective March 1, 2024, and applies to offenses committed on or after that date.

4) Business Records Hearsay Exception Authentication Changes – [S.L. 2023-151 \(S 409\)](#)G.S. 8C-1, Rule 803, reads as rewritten:

"Rule 803. Hearsay exceptions; availability of declarant immaterial.

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(6) Records of Regularly Conducted Activity. – A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if (i) kept in the course of a regularly conducted business activity and (ii) it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, ~~or~~ by affidavit or by document under seal under Rule 902 of the Rules of Evidence made by the custodian or witness, or by a certification that complies with 28 U.S.C. § 1746 made by the custodian or witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. Authentication of evidence by affidavit shall be confined to the records of nonparties, and the proponent of that evidence shall give advance notice to all other parties of intent to offer the evidence with authentication by affidavit. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

5) Changes to Requirements for Electronic Recording of In-Custody and Juvenile Interrogations – [S.L. 2023-74 \(H 790\)](#)

§ 15A-211. Electronic recording of interrogations.

(a) Purpose. – The purpose of this Article is to require the creation of an electronic record of an entire custodial interrogation in order to eliminate disputes about interrogations, thereby improving prosecution of the guilty while affording protection to the innocent and increasing court ~~efficiency~~, efficiency and confidence.

(b) Application. – The provisions of this Article shall apply to all custodial interrogations of juveniles in criminal investigations conducted at any place of detention. The provisions of this Article shall also apply to any custodial interrogation of any person in a felony criminal investigation conducted at any place of ~~detention if the investigation is related to any of the following crimes: any Class A, B1, or B2 felony, and any Class C felony of rape, sex offense, or assault with a deadly weapon with intent to kill inflicting serious injury~~ detention.

(c) Definitions. – The following definitions apply in this Article:

(1) Electronic recording. – An audio recording that is an authentic, accurate, unaltered record; or a visual recording that is an authentic, accurate, unaltered record. A visual and audio recording shall be simultaneously produced whenever reasonably feasible, provided that a defendant may not raise this as grounds for suppression of evidence.

(2) In its entirety. – An uninterrupted record that begins ~~with and includes~~ at the start of the custodial interrogation, including a law enforcement officer's advice to the person in custody of that person's constitutional rights, and ends when the ~~interview~~ custodial interrogation has completely finished, ~~and clearly shows both the interrogator and the person in custody throughout~~ finished. If the record is a visual ~~recording~~, recording of a custodial interrogation, the camera recording the custodial interrogation must be placed so that the camera films both the interrogator and the suspect. Brief periods of recess, upon request by the person in custody or the law enforcement officer, do not constitute an "interruption" of the record. The record will reflect all starting and ending times and dates, including the starting time and date of the recess and the resumption of the interrogation.

(3) Place of detention. – A jail, police or sheriff's station, correctional or detention facility, holding facility for prisoners, or other facility where persons are held in custody in connection with criminal charges.

(d) Electronic Recording of Interrogations Required. – ~~Any law enforcement officer conducting a custodial interrogation in an investigation of a juvenile shall make an electronic recording of the interrogation in its entirety.~~ Any law enforcement officer conducting a custodial interrogation ~~interrogation, in an investigation relating to any of the following crimes a place of detention, of (i) a juvenile involved in a criminal investigation or (ii) any person~~

involved in a felony criminal investigation shall make an electronic recording of the custodial interrogation in its entirety: any Class A, B1, or B2 felony; and any Class C felony of rape, sex offense, or assault with a deadly weapon with intent to kill inflicting serious injury.

(e) Admissibility of Electronic Recordings. – During the prosecution of any offense to which this Article applies, an oral, written, nonverbal, or sign language statement of a defendant made in the course of a custodial interrogation may be presented as evidence against the defendant if an electronic recording was made of the custodial interrogation in its entirety and the statement is otherwise admissible. If the court finds that the defendant was subjected to a custodial interrogation that was not electronically recorded in its entirety, any statements made by the defendant after that non-electronically recorded custodial interrogation, even if made during an interrogation that is otherwise in compliance with this section, may be questioned with regard to the voluntariness and reliability of the statement. The State may establish through clear and convincing evidence that the statement was both voluntary and reliable and that law enforcement officers had good cause for failing to electronically record the interrogation in its entirety. Good cause shall include, but not be limited to, the following:

(1) The accused refused to have the interrogation electronically recorded, and the refusal itself was electronically recorded.

(2) The failure to electronically record an interrogation in its entirety was the result of unforeseeable equipment failure, and obtaining replacement equipment was not feasible.

(e1) Recordings of nondefendant custodial interrogations under this Article shall be provided to the juvenile or criminal defendant as part of discovery requirements under Chapters 7B and 15A of the General Statutes.

(f) Remedies for Compliance or Noncompliance. – All of the following remedies shall be granted as relief for compliance or noncompliance with the requirements of this section:

(1) Failure to comply with any of the requirements of this section shall be considered by the court in adjudicating motions to suppress a statement of the defendant made during or after a custodial interrogation.

(2) Failure to comply with any of the requirements of this section shall be admissible in support of claims that the defendant's statement was involuntary or is unreliable, provided the evidence is otherwise admissible.

(3) When evidence of compliance or noncompliance with the requirements of this section has been presented at trial, the jury shall be instructed that it may consider credible evidence of compliance or noncompliance to determine whether the defendant's statement was voluntary and reliable.

(g) Article Does Not Preclude Admission of Certain Statements. – Nothing in this Article precludes the admission of any of the following:

- (1) A statement made by the accused in open court during trial, before a grand jury, or at a preliminary hearing.
- (2) A spontaneous statement that is not made in response to a question.
- (3) A statement made during arrest processing in response to a routine question.
- (4) A statement made during a custodial interrogation that is conducted in another state by law enforcement officers of that state.
- (5) A statement obtained by a federal law enforcement officer.
- (6) A statement given at a time when the interrogators are unaware that the person is suspected of an offense to which this Article applies.
- (7) A statement used only for impeachment purposes and not as substantive evidence.
- (h) Destruction or Modification of Recording After Appeals Exhausted. – The State shall not destroy or alter any electronic recording of a custodial interrogation of a defendant convicted of any offense related to the interrogation until one year after the completion of all State and federal appeals of the conviction, including the exhaustion of any appeal of any motion for appropriate relief or habeas corpus proceedings. Every electronic recording should be clearly identified and catalogued by law enforcement personnel. Every electronic recording of nondefendant custodial interrogations may be destroyed at the conclusion of the State appeal process."

SECTION 2.(b) This section becomes effective October 1, 2023, and applies to custodial interrogations occurring on or after that date.

6) New Requirement that in-custody informant statements be recorded

§ 15A-981. Corroboration of in-custody informant statement.

(a) Definition. – As used in this section, the term "in-custody informant" means a person, other than a codefendant, accomplice, or coconspirator, whose testimony is based on statements allegedly made by the defendant while both the defendant and the informant were held within a city or county jail or a State correctional institution or otherwise confined, where statements relate to offenses that occurred outside of the confinement.

(b) Recording of In-Custody Informant Interview. – All interviews of in-custody informants by a law enforcement officer shall be recorded using a visual recording device that provides an authentic, accurate, unaltered, and uninterrupted record of the interview that clearly shows both the interviewer and the in-custody informant. This subsection shall not apply to attorneys for the State or defense conducting an interview as part of trial preparation.

(c) Destruction or Modification of Recording After Appeals Exhausted. – The State shall not destroy or alter any electronic recording of an in-custody informant interview until one year after the completion of all State and federal appeals of the conviction, including the exhaustion of any appeal of any motion for appropriate relief or habeas corpus proceedings. Every electronic recording shall be clearly identified and catalogued by law enforcement personnel."

SECTION 4.(b) This section becomes effective October 1, 2023, and applies to offenses committed on or after that date.