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## 2019 Sausage Report:

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### Legislative Update, Part One

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Due to a stalemate over the budget that was passed by the legislature and vetoed by the Governor and a protracted fight which seems to center around Medicaid expansion, the 2019 General Assembly has not yet adjourned this year's session. However, they have already passed a number of laws relating to law enforcement and some of them have already gone into effect, so it's important that you are aware of them. Without further ado, let's jump into part one of this year's highly anticipated Sausage Report!

#### Traffic Related Laws

One of the amazing things your legislators did this year was to invent yet another type of motor vehicle.<sup>1</sup> In the last few years, we have seen the recognition of the "fully autonomous vehicle,"<sup>2</sup> the "electric assisted bicycle," the "motor-driven bicycle," and the "autocycle," not to mention lots of moped changes and Unmanned Aircraft System (UAS or "drone") laws. This year's addition is something called the "mini-truck." Here's an example:



Effective June 21, 2019, a **mini-truck**<sup>3</sup> is now defined by G.S. 20-4.01(27) as "a motor vehicle designed, used, or maintained primarily for the transportation of property and having four wheels, an engine displacement of 660cc or less, an overall length of 130 inches or less, an overall height of 78 inches or less, and an overall width of 60 inches or less."<sup>4</sup> According to G.S. 20-121.1, a mini-truck may only be operated on roads where the speed limit is 55mph or less and otherwise are required to follow the same rules and requirements of "low-speed vehicles" covered under that same statute, including working safety equipment, registration, and insurance.

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<sup>1</sup> Well, okay, they didn't actually invent the mini-truck, but they've recognized it exists. I'm still waiting for them to invent the DeLorean time machine. In all seriousness, there is actually a bill that may be passed that would govern those electric scooters we were all talking so much about last year.

<sup>2</sup> Fully autonomous vehicles have yet to arrive, of course, but our laws are definitely ready for them! Should be any day now.

<sup>3</sup> Session Law 2019-34 (House Bill 179). I have included these references for you in case you want to view the actual legislation (because you don't trust me or whatever.) You can go to the General Assembly's webpage ([www.ncleg.gov](http://www.ncleg.gov)) and enter the bill number at the top of the page to view it.

<sup>4</sup> Get out your tape measures!

Another traffic related law broadens the authority of the Department of Transportation to **close “State transportation infrastructure”**<sup>5</sup> (or what we would call roads). Former G.S. 136-26 allowed the DOT to put up barriers in order for construction work to be done and as amended, effective December 1, 2019, the statute will allow barriers also for “damage posing a danger to public safety.” More relevant to law enforcement, it is a Class 1 misdemeanor to remove, injure, or destroy barriers, notices, signs, lights, or lanterns posted or placed for this purpose. Obviously, law enforcement, first responders, emergency management, and DOT personnel are exempted from that crime.

Our final traffic related law in this update (although more are likely on the way in future installments) deals with **motorcyclists wearing facemasks**. G.S. 14-12.7 and 14-12.8 make it illegal for a person to wear “any mask, hood or device” on public ways or on public property “whereby the person, face or voice is disguised so as to conceal the identity of the wearer.” There are several exceptions to this law listed in G.S. 14-12.11 (including for “traditional holiday costumes in season”) but motorcyclists with cold faces were not excepted until now. A new section in G.S. 14-12.11 allows a person to “wear a mask for the purpose of protecting the person’s head, face, or head and face, when operating a motorcycle.” The motorcyclist is required to remove the mask during a traffic stop or at a checkpoint. This would not be its own crime but failure to remove the mask when asked to do so would constitute Resist, Delay, and Obstruct in my opinion. This exception goes into effect on December 1.

### Vice Related Laws

The legislature passed a law this year that will allow the **sale of alcohol at an athletic arena on the campus or property of a public college or university**,<sup>6</sup> provided the Board of Trustees of the college or university votes to allow it to happen. This is good news for those of you that have sorry teams because you might not have to walk as far to drown your sorrows. In unrelated news, N.C. State University’s Board of Trustees was one of the first to vote to allow alcohol sales at their football games.<sup>7</sup> This law became effective on June 26<sup>th</sup>.

While we are on the subject of “things that were illegal but were occurring anyway,” it’s a good time to mention that **charity “game nights”**<sup>8</sup> have now been officially legalized, effective on June 1, 2019. This no doubt came as a surprise to some charities that had been holding these events already under the mistaken assumption that they were not illegal if people weren’t playing for cash. Under the new law, an organization that has been tax-exempt under Internal Revenue Code 501(c)(3) or other similar provisions for at least five years may conduct no more than one game night a quarter. They have to apply for a permit and pay a fee of \$100 and they may not pay cash directly from the games but instead players can exchange their chips or tokens for raffle tickets which will then be drawn for prizes. The permissible games are roulette, blackjack, poker, craps, a “simulated horse race,” or a “merchandise wheel of fortune.”<sup>9</sup> There are other rules spelled out that govern the places that host these game nights and the vendors who provide the machines as well. Violating any of these rules turns “game night” into “illegal gambling” and a Class 2 misdemeanor.

There are a couple of new criminal offenses related to vice and narcotics also. First is the new **“death by distribution” offense**.<sup>10</sup> A person is guilty of the Class C felony of death by distribution if:

1. The person unlawfully sells<sup>11</sup> at least one certain controlled substance;

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<sup>5</sup> Session Law 2019-84 (House Bill 67)

<sup>6</sup> Session Law 2019-52 (House Bill 389)

<sup>7</sup> #mackisback. Like Charlie Brown running full speed to kick the football that he believes Lucy won’t pull away, I’ve been sucked into believing that UNC football is on the path to greatness yet again. Just let me hang on to my dream at least until the season starts.

<sup>8</sup> Session Law 2019-13 (House Bill 130)

<sup>9</sup> While we are talking about games, I need to rant about something. Most of you will have no idea what I’m talking about (much like these legal updates) and I’m aware of that, but I mentioned the return of several game shows in a footnote a few weeks ago and one of them was “The \$100,000 Pyramid.” Twice now, I’ve watched the show when they have “buzzed” a clue given by one of the contestants – this usually happens when they say a part of the answer while they are trying to get the other contestant to guess it. But the stated reason for buzzing the clue on these two occasions was that “the clue was too descriptive.” What?! The dude got penalized for giving too good of a clue? I don’t understand what happened to this country. Dick Clark would have never let this happen. Ok, back to our legislative update.

<sup>10</sup> Session Law 2019-83 (House Bill 474)

- a. The “certain controlled substances” covered by this statute are “any opium, opiate, or opioid; any synthetic or natural salt, compound, derivatative, or preparation of opium, opiate, or opioid;” cocaine [or related derivatives], methamphetamine; a Schedule IV depressant under G.S. 90-92(a)(1); or a mixture of any of these substances.
2. The ingestion of the drug causes the death of the user;
3. The sell of the controlled substance was the proximate cause of the death; and
4. The person did not act with malice.<sup>12</sup>

If the defendant has a prior conviction for Possession with Intent to Sell and Deliver or Trafficking a controlled substance<sup>13</sup> within seven years of this offense, excluding any time spent in jail or prison, then he is guilty of “Aggravated Death by Distribution” which is a Class B2 felony. Issuing a valid prescription for the drugs and appropriate persons dispensing drugs pursuant to a valid prescription are exempt from this crime which becomes effective on December 1<sup>st</sup>.

A person who **breaks and enters a pharmacy**<sup>14</sup> with the intent to commit a larceny of a controlled substance is guilty of a Class E felony under new G.S. 14-54.2. That same statute also makes the receiving or possession of a controlled substance stolen pursuant to such a breaking and entering a Class F felony if the person knows or has reasonable grounds to know the substance was stolen. Both of these also become effective on December 1<sup>st</sup>.

Finally, there were two more miscellaneous vice related bills of note. The legislature amended the law to allow courts to order defendants to pay \$600 for any **crime laboratory analysis costs**<sup>15</sup> whether or not the lab is operated by a local government or group of governments as was previously required. And “testing equipment for identifying or analyzing the strength, effectiveness, or purity of a controlled substance” is no longer considered to be illegal **drug paraphernalia**<sup>16</sup> under the statutes that make drug paraphernalia illegal. The crime lab fees law became effective on July 1<sup>st</sup> while the paraphernalia change went into effect on July 22<sup>nd</sup>.

### Police Procedure Changes

Of course, each year brings with it some tweaks in how law enforcement officers may carry out their duties as well and this year is no exception. The **mutual aid statute**<sup>17</sup> (G.S. 160A-288) was amended to allow agencies to enter into mutual aid agreements with out-of-state law enforcement agencies so long as the laws of the other state allow for that.<sup>18</sup> In addition, the **police video statute**<sup>19</sup> (G.S. 132-1.4A) was amended to allow for the release of body camera or dash camera footage by the agency without a court order either “for suspect identification or apprehension” or “to locate a missing or abducted person” effective June 26<sup>th</sup>. These exceptions are in addition to the other exceptions that were already present in the statute, such as for discovery purposes.

Since 2015, the law has required officers doing a “show-up” identification procedure to take a photo of the suspect at the time of the show-up. This raised confusion as to whether juveniles could be photographed under this section. Effective June 26, the law has been clarified to only require **photographing of a juvenile**<sup>20</sup> who is 10 or older and has committed one of the non-divertible offenses (murder, rape, sex offense, arson, felony drugs, first

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<sup>11</sup> Note that this crime requires that the substance be sold and not merely “distributed” or delivered.

<sup>12</sup> This is because if the defendant acted with malice, you’ve got a murder to charge instead of this crime.

<sup>13</sup> The rarer offenses of Continuing Criminal Enterprise under G.S. 90-95.1, Using a Minor to Commit a Drug Law Violation (G.S. 90-95.4), and Promoting Drug Sales by a Minor (G.S. 90-95.6) will also trigger this aggravated offense. The statute does not appear to limit these previous convictions to any particular types of controlled substance.

<sup>14</sup> Session Law 2019-40 (Senate Bill 151)

<sup>15</sup> Session Law 2019-150 (House Bill 323)

<sup>16</sup> Session Law 2019-159 (House Bill 325)

<sup>17</sup> Session Law 2019-130 (House Bill 629). This change became effective on July 19<sup>th</sup>.

<sup>18</sup> It seems that there is some big national event coming to Charlotte next year where this change might come in handy, but I’m sure you already knew about that.

<sup>19</sup> Session Law 2019-48 (Senate Bill 148)

<sup>20</sup> Session Law 2019-47 (House Bill 415)

degree burglary, crime against nature, felony involving use of deadly weapon or willful infliction of serious bodily injury) with the addition of common law robbery. Photos of juveniles taken under this section must be kept separate from adult records and are not public records.

Our last legal change for part one deals with missing persons and the **National Missing and Unidentified Persons System**<sup>21</sup> (also called “NamUs”).<sup>22</sup> The NamUs system is a national clearinghouse for missing as well as unidentified and unclaimed person cases. Effective October 1<sup>st</sup>, new additions to G.S. 143B-1015 now require a law enforcement agency to enter information from a missing or unidentified person report into NamUs when (1) a missing person or child has been missing for more than 30 days; or (2) an unidentified person has not been identified for more than 30 days following their death. When entering a case, the agency shall include all available information including medical records, DNA records, and dental records. If the missing person is found or the unidentified person is identified, the agency must enter that fact into NamUs as well.

And that wraps this sausage up! Stay tuned for more new laws in part two, including the answer to this question: “What biological item did the legislature approve restaurants to use as plates starting in October?” I’m sure you can’t wait to find out!

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**ABOUT THE AUTHOR: Brian Beasley is the Legal Advisor for the High Point Police Department. This legal update is provided free of charge to the SR Webpage in the hopes that officers across the state would be able to benefit from it. Brian is not an attorney with Smith Rodgers, PLLC but he thinks they’re pretty cool guys.**



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<sup>21</sup> Session Law 2019-90 (House Bill 747)

<sup>22</sup> As you know, I love me a good acronym. And although it took some work, this acronym not only shortens the name but actually makes a phrase that tells us what its all about. It’s as if the unidentified persons in this system are crying out “Name us!” A big hat tip to whomever pulled that off. You don’t want to play Boggle with them.