

2021 Legislative Reforms to North Carolina Ordinance & Regulatory Crimes
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October 2021

On recommendation of the General Statutes Commission of the North Carolina General Assembly,¹ North Carolina recently passed legislation to address the proliferation of ordinance and regulatory crimes. The new legislation limits the ability of local ordinances and administrative rules to proscribe criminal offenses and is a first step in a larger effort to examine the breadth and organization of the state’s criminal code.

Ordinance Crimes

The North Carolina General Assembly delegates a “general police power” to local governments giving them the authority to enact ordinances regulating matters affecting the “health, safety, or welfare” of citizens and the “peace and dignity” of the local jurisdiction.² Local governments use this authority to create ordinances dealing with issues of local concern ranging from animal control to alcohol possession.³ Historically, North Carolina statutes have provided a general rule that violating a local ordinance unrelated to motor vehicles is a Class 3 misdemeanor.⁴

While local officials justifiably may appreciate that the threat of criminal prosecution incentivizes compliance with local regulations, stakeholders have identified a number of issues associated with ordinance crimes. First, ordinance crimes elevate relatively minor misconduct, like sleeping in parks and begging, to criminal status.⁵ Not only are criminal justice system resources used to charge and prosecute that conduct,⁶ but the person charged acquires a criminal record and may be required to pay fines, fees, and costs associated with a conviction.⁷ This has led some to question whether criminal status is appropriate given the nature of the

¹ See generally GENERAL STATUTES COMMISSION OF THE NORTH CAROLINA GENERAL ASSEMBLY, REPORT ON STUDY OF CRIMES DEFINED BY RULE OR ORDINANCE (2021) (recommending the legislative changes discussed in this paper and providing a sample bill), <https://ncleg.gov/documents/sites/committees/BCCI-151/DN%2019-2%20Crimes%20Study%20Report%20Documents/2021%20Crimes%20Study%20Report.pdf>.

² See generally G.S. Ch. 153A, Art. 6 (counties); G.S. Ch. 160A, Art. 8 (cities). Local governments have additional authority to enact ordinances on specific subject matter beyond this general ordinance making power.

³ Jessica Smith, *Overcriminalization & Ordinance Violations as Crimes*, N.C. CRIM. LAW BLOG (Mar. 21, 2019), <https://nccriminallaw.sog.unc.edu/overcriminalization-ordinance-violations-as-crimes/>.

⁴ G.S. 14-4(a); G.S. 153A-123(b); G.S. 160A-175(b).

⁵ Smith, *supra* note 3.

⁶ Jessica Smith, *Overcriminalization & Ordinance Violations as Crimes: A County-Level Breakdown*, N.C. CRIM. LAW BLOG (Apr. 29, 2019) (at least 10,946 ordinance crimes were charged in North Carolina in 2018), <https://nccriminallaw.sog.unc.edu/overcriminalization-ordinance-violations-as-crimes-a-county-level-breakdown/>.

⁷ See generally G.S. 7A-304 (Costs in criminal actions); North Carolina Administrative Office of the Courts, *Current Court Costs*, NCCOURTS.ORG (Nov. 6, 2020) (costs and fees for a criminal case prosecuted in District Court as of December 1, 2020 totaled at least \$176), <https://www.nccourts.gov/documents/publications/current-court-costs>. See also JAMES M. MARKHAM, *MONETARY OBLIGATIONS IN NORTH CAROLINA CRIMINAL CASES* (2018), available at <https://nccriminallaw.sog.unc.edu/wp-content/uploads/2018/08/2018-07-31-20180094-Monetary-Obligations-Card%E2%80%93for-proofing.pdf>.

underlying behavior.⁸ Second, as noted, some ordinance crimes target behavior associated with poverty and homelessness.⁹ Stakeholders have suggested that it is both unfair and inefficient to treat these social problems as criminal conduct, noting that the criminal system is poorly equipped to address the root causes of the underlying behavior.¹⁰ Third, ordinance crimes divert limited police resources from preventing and solving serious and violent crime to addressing minor behavior.¹¹ Fourth, ordinance crimes make it hard for people to know what the law is and to conform their behavior accordingly. Ordinance crimes vary from jurisdiction to jurisdiction,¹² and because ordinances are not centrally codified in the North Carolina General Statutes,¹³ it is hard for people to know what conduct has been criminalized.¹⁴ Finally, some local governments may not even be aware that they are creating criminal offenses when enacting ordinances.¹⁵

Administrative Rule Crimes

Much like the situation with ordinances, the General Assembly delegates certain rule-making authority to various state agencies, commissions, and licensing boards.¹⁶ Quite often, the delegation of authority is accompanied by statutory language providing that a violation of an adopted rule or regulation is a misdemeanor.¹⁷ This rule-making authority is used to regulate a wide variety of activity, from the manner of inland fishing to uniforms worn by private security guards.

⁸ See GENERAL STATUTES COMMISSION OF THE NORTH CAROLINA GENERAL ASSEMBLY, *supra* note 1, at 8 (after reviewing reports of counties cataloging their ordinance crimes, the Commission questioned whether certain violations should be misdemeanor criminal offenses).

⁹ Smith, *supra* note 3.

¹⁰ NORTH CAROLINA TASK FORCE FOR RACIAL EQUITY IN CRIMINAL JUSTICE, REPORT 2020, 86-87 (2020) (recommending legislation that would sunset all local ordinance crimes that criminalize poverty or behavior in public places), https://ncdoj.gov/wp-content/uploads/2020/12/TRECReportFinal_12132020.pdf.

¹¹ JOHN LOCKE FOUNDATION, NORTH CAROLINA POLICY SOLUTIONS 2020, 139 (2020) (ordinance crimes waste scarce law enforcement resources that could be better used to prevent and punish serious offenses).

¹² Shea Denning, *Is it Legal to Keep a King Cobra as a Pet?*, N.C. CRIM. LAW BLOG (May 11, 2016) (indicating that legality varies by local jurisdiction), <https://nccriminallaw.sog.unc.edu/legal-keep-king-cobra-pet/>.

¹³ Smith, *supra* note 3.

¹⁴ JOHN LOCKE FOUNDATION, *supra* note 11, at 139.

¹⁵ It appears that it was difficult for local governments and rule-making agencies themselves to identify and describe the conduct they had criminalized by ordinance or rule as the General Statutes Commission repeatedly noted that its effort to examine the issue was hindered by the limited relevant information provided in statutorily mandated reports from local governments and agencies. See GENERAL STATUTES COMMISSION OF THE NORTH CAROLINA GENERAL ASSEMBLY, *supra* note 1, at 20.

¹⁶ See, e.g., G.S. 113-134 (empowering the Marine Fisheries Commission and the Wildlife Resources Commission to adopt rules pertaining to conservation of marine and estuarine and wildlife resources); G.S. 53-185 (empowering the State Banking Commission to make rules and regulations necessary in implementing the North Carolina Consumer Finance Act); G.S. 90-48 (empowering the North Carolina State Board of Dental Examiners to enact rules governing the practice of dentistry).

¹⁷ See, e.g., G.S. 113-135 (providing that a person is guilty of a misdemeanor if he or she violates rules adopted by the Marine Fisheries Commission or the Wildlife Resources Commission, subject to certain exceptions).

Unlike local ordinances, North Carolina administrative rules are centrally codified in the North Carolina Administrative Code.¹⁸ Thus, as compared to the fragmented codification of local ordinances, a citizen has the benefit of resorting to a single repository to review what rules and regulations have been enacted. However, understanding the potential criminal liability associated with any given rule violation requires careful reading and tedious cross-reference between the General Statutes and the Administrative Code.¹⁹ And, as is the case with local ordinances, administrative rules and regulations sometimes address issues that arguably do not call for the harsh sanction of criminal prosecution.²⁰

Legislative Reforms

The North Carolina General Assembly recently passed legislation that curbs the criminalization of local ordinance and administrative rule violations.

Ordinances

Part XIII of [S.L. 2021-138](#) amends existing provisions and creates new ones to provide that ordinance violations no longer will default to misdemeanor status, to protect certain conduct from being criminalized by ordinance, and to create a defense to ordinance crimes. First, the General Assembly amended G.S. 153A-123 (enforcement of ordinances by counties) and G.S. 160A-175 (enforcement of ordinances by cities) to provide that a violation of an ordinance is punishable as a misdemeanor *only* if the ordinance so specifies. By requiring local governments to explicitly identify when an ordinance violation is punishable as a crime, rather than automatically making a violation a crime unless the local government says otherwise, the changes may result in more careful consideration of whether proscribed conduct ought to result in criminal liability.

The statutory revisions also identify specific types of ordinances that may not impose a criminal penalty. Examples include ordinances regulating businesses and trades, ordinances regulating cisterns and rain barrels, ordinances regulating outdoor advertising, and ordinances regulating trees.

Finally, S.L. 2021-138 creates a statutory defense to ordinance crimes. Under new G.S. 14-4(c), a person may not be found guilty of a misdemeanor ordinance crime if at the time of trial the person produces proof that (1) they have not been charged with a new violation of the ordinance within 30 days of the initial violation or (2) that they have made a good-faith effort to seek assistance to address underlying factors related to unemployment, homelessness, mental health, or substance abuse that might relate to their ability to comply with the ordinance.

These legislative changes become effective December 1, 2021 and apply to offenses and violations committed on or after that date.

¹⁸ Available online at: <http://reports.oah.state.nc.us/ncac.asp>.

¹⁹ See *generally* note 15, *supra*.

²⁰ GENERAL STATUTES COMMISSION OF THE NORTH CAROLINA GENERAL ASSEMBLY, *supra* note 1, at 6 (indicating that the Board of Examiners of Electrical Contractors reported that it “has not sought to prosecute criminally any person for violation of the rules of the Board through the Court system in North Carolina”).

Administrative Rules

The General Assembly addressed the criminalization administrative rule violations in [S.L. 2021-84](#). In a series of similar amendments, the legislature deleted language in a variety of statutes providing that it is a misdemeanor to violate rules or regulations promulgated by certain agencies, commissions, and licensing boards through delegated authority.

For example, G.S. Chapter 74C regulates private protective services professions such as operators of armored cars, security guards, and private detectives. The chapter accomplishes this regulation in part by creating the Private Protective Services Board to administer licensing and set training requirements for engaging in the profession. The Board is empowered to adopt administrative rules necessary for that function and G.S. 74C-17(b) provides that a knowing violation of any such rule is a Class 1 misdemeanor, as is a knowing violation of any substantive provision of Chapter 74C. Section 3 of S.L. 2021-84 deletes the language in G.S. 74C-17(b) making violation of the Board's administrative rules a misdemeanor but leaves intact the language criminalizing violations of the chapter's substantive provisions. Thus, after the statute's effective date, violating the administrative rule related to uniforms and equipment will not be a Class 1 misdemeanor.²¹ It will, however, be a Class 1 misdemeanor to carry a firearm while performing private protective services without having an appropriate permit because that behavior is criminalized in Chapter 74C.²²

Generally speaking, other sections of S.L. 2021-84 function in a similar manner to eliminate statutory provisions that broadly criminalize violations of administrative rules promulgated by other licensing boards and commissions. These legislative changes become effective December 1, 2021 and apply to offenses committed on or after that date.

Looking Ahead

As noted, the legislature's effort to limit the criminalization of ordinance and administrative rule violations appears to be a first step in a broader effort to simplify North Carolina's criminal code. As part of the study report cited in this paper, the General Statutes Commission recommended the establishment of a criminal code recodification commission to examine whether comprehensive reorganization of the state's criminal law is necessary.²³ The General Assembly acted on that advice in Part XX of S.L. 2021-138, creating the Bipartisan North Carolina Legislative Working Group on Criminal Law Recodification for the purpose of making recommendations regarding a "streamlined, comprehensive, orderly, and principled criminal code which includes all common law, statutory, regulatory, and ordinance crimes." The Working Group is directed to meet monthly from September 2021 through December 2022, and is tasked with, among other things, creating databases of all statutory and common law crimes, all ordinance crimes, and all crimes created by administrative boards and bodies.

²¹ 14B NCAC 16 .0104.

²² G.S. 74C-13(b).

²³ GENERAL STATUTES COMMISSION OF THE NORTH CAROLINA GENERAL ASSEMBLY, *supra* note 1, at 21.

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