2015 Legislation of Interest to Court Officials

UNC School of Government

November 2015

Ann M. Anderson (civil procedure and related statutes; judicial authority and administration))
Shea Riggsbee Denning (motor vehicle law)
Sara DePasquale (abuse, neglect, dependency, and adoption law)
Robert L. Farb (criminal law and procedure)
Cheryl Daniels Howell (family law)
LaToya B. Powell (juvenile delinquency law)
Meredith Stone Smith (selected legislation of interest to clerks of superior court)

Each ratified act discussed here is identified by its chapter number in the session laws and the number of the original bill. When an act creates new sections in the North Carolina General Statutes (hereinafter G.S.), the section number is given; however, the codifier of statutes may change that number later. A session law may be viewed by clicking on the link provided in the text or by going to the General Assembly's website at http://www.ncleg.net.

Contents

Criminal Law and Procedure
Robert L. Farb
School of Government

1. **S.L. 2015-5 (S 78): State correctional officers may carry concealed weapon when off-duty.** This session law adds a new subdivision (7) to G.S. 14-269(b), effective December 1, 2015, to provide that a state correctional officer may carry a concealed weapon when off-duty as long as the officer is not carrying the weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body. If the concealed weapon is a handgun, the officer must meet the firearms training standards of the Division of Adult Correction of the Department of Public Safety.

2. **S.L. 2015-16 (H 91): Study misuse of handicapped windshield placards.** The Division of Motor Vehicles is required to study ways to decrease the misuse of handicapped windshield placards. The study must include the cost, feasibility, and advisability of (1) requiring the inclusion of more personal identifying information on the placard, including the handicapped person's picture; (2) linking the placard to the handicapped person's driver's license or identification card; and (3) linking the placard to a license plate. The DMV must report its findings and recommendations to the Joint Legislative Transportation Oversight Committee by January 15, 2016.

3. **S.L. 2015-18 (H 601): Allow lawful sale of deer skins.** Amended G.S. 113-291.3(b), effective for deer lawfully taken on or after October 1, 2015, allows the skin of deer lawfully taken by hunting to be possessed, transported, bought, or sold, subject to tagging and reporting requirements and any season limits set by the Wildlife Resources Commission.

4. **S.L. 2015-25 (H 79): Clarify contempt remedy for violation of civil no-contact order.** Amended G.S. 50C-10 provides that a knowing violation of a civil no-contact order (which involves stalking or nonconsensual sexual conduct) is punishable by civil or criminal contempt under Chapter 5A of the General Statutes. The current statute simply states that a violation is punishable as contempt of court. This session law is effective for orders entered on or after October 1, 2015.

5. **S.L. 2015-26 (H 102): Authorize law enforcement officers and others to operate utility vehicles on certain public highways; include refuse, solid waste, or recycling vehicles to move-over law.** This session law amends G.S. 20-171.23 (motorized all-terrain vehicle may be operated by law enforcement officers and others on certain highways) and G.S. 20-171.24 (motorized all-terrain vehicle may be operated by city and county employees on certain highways) to add as an authorized vehicle a "utility vehicle" as defined in G.S. 20-4.01(48c), which is a motor vehicle designed for off-road use and used for general maintenance, security, agricultural, or horticultural purposes. G.S. 20-171.24 is also amended to make the statute applicable statewide; the current statute is limited to specified towns, cities, and counties. These provisions are effective May 21, 2015.

   The session law also amends G.S. 20-157(f), commonly known as the move-over law that is applicable when there is an emergency vehicle parked or standing within 12 feet of the roadway and giving a warning signal, to include a vehicle that is being used for collection of refuse, solid waste, or recycling. This amendment is effective for offenses committed on or after October 1, 2015.

6. **S.L. 2015-31 (S 90): Motor vehicles must have at least one brake light on each side of rear of vehicle.** Amended G.S. 20-129(g) and G.S. 20-129.1, effective for offenses committed on or after October 1, 2015, make clear that motor vehicles must be equipped with stop lamps, commonly

known as brake lights, one on each side of the rear of the vehicle (however, a motorcycle only needs one stop lamp). This session law effectively overrules *State v. Heien*, 214 N.C. App. 515 (2011), which ruled that G.S. 20-129(g) only requires one stop lamp.

S.L. 2015-241 (H 97) makes clear that, effective for offenses committed on or after October 1, 2015, a motor vehicle manufactured after December 31, 1955, and on or before December 31, 1970, must be equipped with a stop lamp in the rear of the vehicle.

7. **S.L. 2015-29 (H 434): No medical recertification for renewal of removable windshield handicapped placard if totally and permanently disabled.** Amended G.S. 20-37.6(c1), effective July 1, 2016, provides that medical recertification is not required for renewals of removable windshield handicapped placards if the person is certified as totally and permanently disabled.

8. **S.L. 2015-32 (H 659), as amended by S.L. 2015-264 (S 119): Add types of prior convictions for Class H felony offense of possessing pseudoephedrine.** Amended G.S. 90-95(d1)(1)c. adds the types of prior convictions to support the Class H felony offense of possession of pseudoephedrine to include possession with intent to sell or deliver methamphetamine, trafficking methamphetamine, and possession of an immediate precursor chemical (current law only includes prior convictions of possession or manufacture of methamphetamine). Additional precursor chemicals are added to the list set out in G.S. 90-95(d2). The Joint Legislative Oversight Committee on Justice and Public Safety is authorized to study the current state and federal law regarding the authority of state agencies to schedule controlled substances without legislative action and the procedure to schedule or reschedule. This session law is effective December 1, 2015, and applies to offenses committed on or after that date.

9. **S.L. 2015-36 (S 445): New provisions to protect clients of facilities providing care, treatment, habilitation, or rehabilitation of people with mental illness, developmental disabilities, or substance abuse disorders.** Amended G.S. 122C-66(a) increases from a Class 1 misdemeanor to a Class A1 misdemeanor when an employee or volunteer at a facility knowingly causes pain or injury to a client other than as a part of a generally accepted medical or therapeutic procedure. New G.S. 122C-66(a1) provides that an employee or volunteer at a facility who borrows or takes personal property from a client commits a Class 1 misdemeanor. Amended G.S. 122C-66(b) increases the punishment from a Class 3 misdemeanor to a Class 1 misdemeanor when an employee or volunteer at a facility witnesses or knows of a violation of subsections (a) or (a1) of G.S. 122C-66 or an accidental injury to a client and fails to report it to authorized personnel designated by the facility. New G.S. 122C-66(b1) provides that an employee or volunteer at a facility who witnesses a client become a victim of a violation of Article 7A (rape and other sex offenses) or Article 26 (offenses against public morality and decency) of Chapter 14 must report the violation within 24 hours to the county department of social services, the district attorney, or local law enforcement agency. A failure to report is a Class A1 misdemeanor. All of these provisions are effective for offenses committed on or after December 1, 2015.

10. **S.L. 2015-40 (H 224): Provisions concerning conditional discharge and deferred prosecution.** This session law revises G.S. 15A-150(a), effective for conditional discharges granted on or after December 1, 2015, to add a new subdivision (a)(6) to require the clerk of superior court to file with the Administrative Office of the Courts (AOC), as soon as practicable after each court term, the names of people granted a dismissal on completion of a conditional discharge under G.S. 14-50.29, 14-204, 14-313(f), 15A-1341(a4), 90-96, or 90-113.14. The substantive change is adding to G.S. 15A-150(a) the citations to G.S. 14-313(f) (conditional discharge for offenses involving youth access to

tobacco products) and G.S. 15A-1341(a4) (conditional discharge for certain Class H and I felonies and misdemeanors), because the other statutory provisions are currently listed in G.S. 15A-150(a)(2), (a)(3), and (a)(5), but are moved to new subdivision (a)(6). Amended G.S. 15A-1342(a1), effective July 1, 2015, clarifies that a court may order the Community Corrections Section to supervise an offender's compliance with the terms of any conditional discharge or deferred prosecution agreement (current law is limited to a discharge or agreement entered into under G.S. 15A-1341(a1), (a3), or (a4)). Amended G.S. 15A-151(a)(4), effective July 1, 2015, includes an expunction under G.S. 15A-145.6 (expunction for certain prostitution convictions) to the AOC's authority to disclose certain expunctions to state and local law enforcement agencies for employment purposes.

11. **S.L. 2015-41 (H 295): Division of Juvenile Justice may determine whether it is appropriate to release certain information about escaped delinquent juvenile.** Amended G.S. 7B-3102(a), effective May 29, 2015, provides that the Division of Juvenile Justice, Department of Public Safety, may release, if appropriate (currently law is mandatory), a statement about an escaped juvenile delinquent to the public concerning the Division's level of concern about the juvenile's threat to himself or herself or others. The determination whether to release this information must be made by the Division's Deputy Commissioner or his or her designee.

12. **S.L. 2015-43 (H 82): Court may authorize officer, when executing a nonsecure custody order alleging abuse, neglect, and dependency, to enter private property and make a forcible entry.** Amended G.S. 7B-504 allows a court—if it finds based on a petition alleging abuse, neglect, or dependency or the petitioner's testimony that a less intrusive remedy is unavailable—may authorize a law enforcement officer to enter private property to take physical custody of the juvenile. If required by exigent circumstances, the court may authorize an officer to make a forcible entry at any hour. This session law is effective for orders issued on or after June 2, 2015.

13. **S.L. 2015-44 (H 113): Increase criminal punishment for sex offenses committed against a student by school personnel other than teacher and others.** Amended G.S. 14-27.7(b) (school personnel, other than teacher, school administrator, student teacher, school safety officer, or coach, who is less than four years older than student victim, commits vaginal intercourse with student), recodified later as G.S. 14-27.32(b) by S.L. 2015-181, increases the punishment from a Class A1 misdemeanor to a Class I felony. This provision is effective for offenses committed on or after December 1, 2015. [Note: Although this punishment change was not carried forward in the statutory language in new G.S. 14-27.32(b), as recodified by S.L. 2015-181, it still became law based on the provisions of G.S. 120-20.1(b1).]

    Amended G.S. 14-202.4(b) (school personnel, other than teacher, school administrator, student teacher, school safety officer, or coach, who is less than four years older than student victim, takes indecent liberties with student) increases the punishment from a Class A1 misdemeanor to a Class I felony. Amended G.S. 14-202.4(d) provides that the definition of "school personnel" includes those employed by a nonpublic, charter, or regional school. This provision is effective for offenses committed on or after December 1, 2015.

    Amended G.S. 14-208.15 (sex offender registration), effective December 1, 2015, provides that on request of an institution of higher education, the sheriff of the county in which the institution is located must provide registry information for any registrant who has stated he or she is a student or employee or expects to become one. Sets out additional provisions about a report of information from the registry.

14. **S.L. 2015-47 (H 294): Criminal offense to provide a cell phone to delinquent juvenile in custody of Department of Public Safety.** Amended G.S. 14-258.1, effective for offenses committed on or after December 1, 2015, provides that it is a Class H felony knowingly to give or sell a cell phone or other wireless communications device to a delinquent juvenile in the custody of the Division of Juvenile Justice of the Department of Public Safety. It makes clear that the offense applies to a juvenile confined in a youth development center or detention facility and also applies when the juvenile is transported to or from confinement.

15. **S.L. 2015-48 (H 570): Duty to identify outstanding arrest warrants.** Amended G.S. 15A-301.1 provides that when a person is taken into custody, the custodial law enforcement agency must attempt to identify all outstanding warrants and notify appropriate law enforcement agencies of the person's location. The same duty is imposed on a court before entering any court order in a criminal case. Newly-enacted G.S. 148-10.5 requires the Division of Adult Correction of the Department of Public Safety to work with law enforcement, district attorneys' offices, and courts to develop a process at intake and before release to identify all outstanding warrants for an inmate and to resolve them while he or she is in custody, if feasible. The inmate must be notified of the outstanding warrant and any right to counsel. This session law is effective October 1, 2015.

16. **S.L. 2015-49 (H 595): Former or current military police officers under certain circumstances may be certified as law enforcement officers without completing training course.** Newly-enacted G.S. 17C-10.1 provides that for law enforcement certification, former or current military police officers under certain circumstances are not required to complete an accredited Criminal Justice Education and Training Standards Commission training course. Amended G.S. 17C-3 adds three additional members to the Commission: (1) Director of State Bureau of Investigation; (2) Commander of State Highway Patrol; and (3) juvenile justice officer employed by the Juvenile Justice Section, to be appointed by the Governor. This session law is effective on June 3, 2015.

17. **S.L. 2015-50 (H 405): Civil action for damages when person exceeds scope of authorized access to property.** Newly-enacted G.S. 99A-2, effective for acts committed on or after January 1, 2016, provides that a person who intentionally accesses nonpublic areas of another's premises and engages in an act exceeding the person's authority to enter those areas is liable to the owner or operator of the premises for any damages sustained. A court may award one or more of the following remedies: (1) equitable relief; (2) compensatory damages as otherwise allowed by state or federal law; (3) costs and fees, including reasonable attorneys' fees; and (4) exemplary damages as otherwise allowed by state or federal law in the amount of $5,000.00 for each day or a portion of a day that a violation occurs. The session law provides that it does not apply to any governmental agency or law enforcement officer engaged in a lawful investigation of the premises or the owner or operator of the premises. It also provides that its provisions do not diminish the protections provided to employees under Article 21 (retaliatory employment discrimination) of Chapter 95 and Article 14 (protection for reporting improper government activities) of Chapter 126 of the General Statutes.

18. **S.L. 2015-58 (H 879): Various juvenile delinquency law changes.** This session law, effective for offenses committed on or after December 1, 2015, makes various changes to juvenile delinquency law.

    Custodial interrogation age change. Current G.S. 7B-2101(b) provides that when a juvenile is less than 14 years old, an in-custody admission or confession resulting from interrogation may not be admitted into evidence unless it was made in the presence of the juvenile's parent, guardian,

custodian, or attorney. The session law amends this statute to make it applicable to a juvenile who is less than 16 years old.

Adjudicatory hearing. Amended G.S. 7B-2202 (probable cause hearing) and 7B-2203 (transfer hearing) provides that the adjudicatory hearing for a misdemeanor after finding no probable cause for a felony or for an offense after the court does not transfer the offense to superior court, respectively, shall be a separate hearing, and the court may continue this hearing for good cause.

Suppression motion made before adjudicatory hearing. New G.S. 7B-2408.5 provides that a motion to suppress evidence made before the adjudicatory hearing must be in writing and a copy of the motion must be served on the State. The remainder of the statute is substantially identical to G.S. 15A-977 (motion to suppress in superior court; procedure), with the following additional provisions. An order denying a suppression motion may be reviewed upon an appeal of a final order of the court in the juvenile matter. The provisions of G.S. 15A-974 (statutory exclusionary rule) are applicable to G.S. 7B-2408.5.

Preliminary inquiry by juvenile court counselor. Amended G.S. 7B-1701 provides that if a complaint against a juvenile has not been previously received, as determined by the juvenile court counselor, the counselor must make reasonable efforts to meet with the juvenile and his or her parent, guardian, or custodian if the offense is divertible.

Prosecutor make take voluntary dismissal or dismissal with leave. Amended G.S. 7B-2404 provides that a prosecutor may take a voluntary dismissal of allegations in a juvenile petition with or without leave either orally in court or by filing a written dismissal with the clerk. The statute sets out the duty to notify various people of the dismissal. If the prosecutor takes a dismissal with leave because the juvenile failed to appear in court, the prosecutor may refile the petition if the juvenile is apprehended or apprehension is imminent.

What constitutes prior adjudication for delinquency history levels. Amended G.S. 7B-2507 (delinquency history levels) provides that a prior adjudication is an adjudication of an offense that occurs before the adjudication of the offense before the court.

Extension of probation. Amended G.S. 7B-2510(c) provides that before the expiration of an order of probation, the court may extend the term for an additional period of one year, after *notice* and a hearing (current law requires a hearing but not notice). At the court's discretion, the hearing to determine to extend probation may occur after the expiration of a probation order at the next regularly scheduled court date or if the juvenile fails to appear in court. Amended G.S. 7B-2510(e) (new disposition authorized after probation violation) to provide that the court may order either (1) a new disposition at the next higher level on the disposition chart or (2) a term of confinement in a secure juvenile detention facility for up to twice the term authorized by G.S. 7B-2508, but not both as allowed under the current statute.

Dispositional order and dispositional alternatives. Amended G.S. 7B-2512 requires the court to include information when issuing a dispositional order, either orally in court or in writing, about the expunction of juvenile records as provided for in G.S. 7B-3200 that are applicable to the order (in effect, informing the juvenile about expunction when issuing the dispositional order). Amended G.S. 7B-2506(12) and (20), involving dispositional alternatives, make clear that the court determines the timing and imposition (underlined words added) of the confinement set out in the statute.

Secure custody changes. Amended G.S. 7B-1903 provides that as long as the juvenile remains in secure custody, further hearings on continued secure custody must be held at intervals of no more than 10 calendar days, but may be waived for no more than 30 calendar days only with the consent of the juvenile through the juvenile's counsel. The order for continued secure custody must be in writing with appropriate findings of fact. The statute is also amended to provide that if the court finds there is a need for an evaluation of a juvenile for medical or psychiatric treatment under subsection (b) of the statute and the juvenile is under 10 years old and does not have a pending

delinquency charge, the law enforcement officer of other authorized person assuming custody of the juvenile may not use physical restraints during the transport of the juvenile to the designated place set out in the order, unless in the officer's or other authorized person's discretion the restraints are reasonably necessary for safety reasons.

19. **S.L. 2015-62 (H 465): Miscellaneous changes-1.** This session law, called the "Women and Children's Protection Act of 2015," makes various criminal and civil changes, although not all of the civil changes will be summarized here.

Statutory rape or sexual offense changes. G.S. 14-27.7A (statutory rape or sexual offense) currently applies to a victim who is 13, 14, or 15 years old. This session law, effective for offenses committed on or after December 1, 2015, changes the age of the victim in both subsections (a) and (b) to a victim who is 15 years old or younger. It also adds a proviso to the Class C felony in subsection (b) that the offense applies unless the conduct is covered under some other provision of law providing greater punishment. [Note: G.S. 14-27.7A was later recodified in S.L. 2015-181.]

Chapters 50B (domestic violence protective orders) and 50C (civil no-contact orders) changes. New G.S. 7A-343.6, effective June 5, 2015, authorizes the Administrative Office of the Courts (AOC) to develop a program in district court for electronic filing in Chapters 50B and 50C cases. To implement the program, each chief district court judge must draft local rules and submit them to the AOC for approval. The local rules must permit the clerk of superior court to accept electronically-filed complaints requesting domestic violence protective orders under Chapter 50B or civil no-contact orders under Chapter 50C that are transmitted from a domestic violence program as defined in G.S. 8-53.12. The authorization for local rules shall be superseded by the promulgation of uniform state rules by the North Carolina Supreme Court.

The following changes are effective for documents filed and hearings held on or after December 1, 2015. Amended G.S. 50B-2 provides that all documents filed, issued, registered, or served in an action under Chapter 50B concerning an ex parte, emergency, or permanent domestic violence protective orders may be filed electronically. Hearings held to consider ex parte relief under G.S. 50B-2(c) may be held via video conference, but hearings held to consider emergency or permanent relief under G.S. 50B-2(a) or (b) shall not be held via video conference. Similar changes are made to Chapter 50C's provisions.

New non-capital sentencing aggravating factor. Amended G.S. 15A-1340.16(d) adds a new non-capital sentencing aggravating factor, applicable to offenses committed on or after December 1, 2015, when the defendant committed an offense and knew or reasonably should have known that a person under 18 who was not involved in the commission of the offense was in a position to see or to hear the offense.

Expand definition of "in the presence of a minor" in assault offense. Amended G.S. 14-33(d) (assault on person with whom defendant has personal relationship), applicable to offenses committed on or after December 1, 2015, expands the definition of "in the presence of a minor" to include a minor who was in the position to hear as well as to see the assault.

Expand domestic violence cases subject to special bail and pretrial release conditions under G.S. 15A-534.1. Amended G.S. 15A-534.1 (domestic violence cases subject to special bail and pretrial release conditions), applicable to offenses committed on or after December 1, 2015, makes subject to the statute a situation in which the victim of the enumerated crimes is a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6).

Expand applicability of offense involving sex offender unlawfully on premises. Amended G.S. 14-208.18(c)(1), applicable to offenses committed on or after December 1, 2015, expands the applicability of the crime involving a sex offender unlawfully on certain premises involving minors, to a person required to register as a sex offender for any federal offense or offense committed in

another state, which if committed in North Carolina, is substantially similar to an offense in Article 7A (rape and other sex offenses) of Chapter 14.

Various changes to abortion provisions. Various amendments relating to abortions are made to G.S. 14-45.1 (when abortion is not unlawful), G.S. 90-21.82 (informed consent to abortion), and G.S. 90-21.86 (procedure when medical emergency requires abortion), but they will not be summarized here.

20. **S.L. 2015-66 (H 222): Elected North Carolina Supreme Court justices subject to retention election.** New Article 1A of Chapter 7A of the General Statutes, effective June 11, 2015, provides that a justice of the North Carolina Supreme Court who was elected to that office by the voters who desires to continue in office shall be subject to approval by the voters in a retention election at the general election immediately preceding the expiration of the expired term. Approval is by a majority of the votes cast.

21. **S.L. 2015-71 (H 352): Standard of proof changed in civil lawsuit against 911 operators.** New G.S. 99E-56, effective for a cause of action arising on or after June 11, 2015, provides that in a civil action arising from any act or omission by the defendant in performing any lawful and prescribed actions concerning the defendant's assigned duties as a 911 or public safety telecommunicator or dispatcher, the plaintiff's burden of proof shall be by clear and convincing evidence (the typical burden of proof is preponderance of evidence, which is a lesser burden than clear and convincing evidence).

22. **S.L. 2015-72 (H 552): New criminal offense of graffiti vandalism.** New G.S. 14-127.1 creates the new offense of graffiti vandalism, which is defined as the unlawful writing or scribbling on, painting, defacing, etc., the walls of (1) any real property, public or private; (2) any public building or facility as defined in G.S. 14-132; or (3) any statue or monument situated in any public place. A person convicted of this offense is guilty of a Class 1 misdemeanor and shall be fined a minimum of $500 and, if community or intermediate punishment is imposed, shall be required to perform 24 hours of community service. It is a Class H felony if the defendant commits graffiti vandalism and has two or more prior graffiti vandalism convictions, if the current violation was committed after the second conviction, and the violation resulting in the second conviction was committed after the first conviction. Amended G.S. 14-132 (disorderly conduct and injuries to public buildings and facilities) adds a proviso in subsection (d) that it is a Class 2 misdemeanor unless the conduct is covered under some other provision of law providing greater punishment. This session law is effective for offenses committed on or after December 1, 2015.

23. **S.L. 2015-73 (H 574): State wildlife laws are not applicable to opossums between December 29 and January 2.** This session law, effective June 11, 2015, provides that state or local statutes, rules, regulations, or ordinances related to the capture, captivity, treatment, or release of wildlife do not apply to the Virginia opossum between December 29 of each year and January 2 of each subsequent year.

24. **S.L. 2015-74 (H 691): Felony to assault member of North Carolina National Guard discharging official duties.** New G.S. 14-34.7(a1) provides that unless covered under another provision of law providing greater punishment, it is a Class F felony to assault a member of the North Carolina National Guard (NCNG) while he or she is discharging or attempting to discharge official duties and inflict serious bodily injury. Amended G.S. 14-34.7(c) provides that it is a Class I felony to assault a NCNG member while he or she is discharging or attempting to discharge official duties and inflict

physical injury.

This session law also deleted "inflicting serious injury" from the title of G.S. 14-34.7, upon which *State v. Crawford,* 167 N.C. App. 777 (2005), relied in ruling that the State need only prove serious injury instead of the more difficult burden of proving serious bodily injury. This legislative change casts doubt on the continuing application of the *Crawford* ruling, and the State may now be required to prove serious bodily injury instead of serious injury in subsections (a), (a1), and (b) of G.S. 14-34.7.

Amended G.S. 14-34.5 provides that it is a Class E felony to assault with a firearm a NCNG member while he or she is performing duties.

This session law applies to offenses committed on or after December 1, 2015.

25. **S.L. 2015-87 (S 83): Amendments to false lien filing law involving property of public officer or employee.** This session law, effective for filings on or after October 1, 2015, adds a new subsection (b1) to G.S. 14-118.6 (filing false lien or encumbrance against public officer or employee's property) to provide when a lien or encumbrance (hereafter, lien) as described in subsection (a) is presented to the clerk of superior court for filing and the clerk has a reasonable suspicion that it is false, the clerk may refuse to file the lien. Neither the clerk nor the clerk's staff are liable for filing or refusing to file a lien. The clerk must not file, index, or docket the document against the property of a public officer or employee until that document is approved for filing by any judge of the judicial district having subject matter jurisdiction. The procedure for judicial review and court orders are set out in this new subsection.

26. **S.L. 2015-89 (S 161): North Carolina Supreme Court may hold sessions in Morganton.** Amended G.S. 7A-10(a), effective June 19, 2015, authorizes the North Carolina Supreme Court to hold sessions not more than twice annually in the City of Morganton, and unless a more suitable site is identified, the court must meet in the Old Burke County Courthouse.

27. **S.L. 2015-91 (S 60): Establishing permanent civil no-contact order against sex offender on behalf of crime victim.** This session law adds new Chapter 50D to the General Statutes to authorize a civil action in district court to obtain a permanent civil no-contact order against a person who committed a sex offense, defined as any criminal offense that requires sex offender registration under Article 27A of Chapter 14. The permanent no-contact order is a permanent injunction for the lifetime of the offender that prohibits any contact by the offender with the victim of the sex offense for which the offender has been convicted. The civil action may be brought by the victim or an adult residing in the state on behalf of a minor victim or an incompetent adult for a sex offense that occurred in the state. This new law sets out the required court findings before issuing the permanent no-contact order and types of relief that the court may grant, all related to no contact with the victim. A victim may file a motion for contempt for a violation of the order. A person who knowingly violates a court order is guilty of a Class A1 misdemeanor. A law enforcement officer must arrest a person, with or with a warrant or other process, if the officer has probable cause that the person knowingly has violated a non-contact order. The Administrative Office of the Courts must develop forms to implement the processes established by this new law, including amending the Rules of Recordkeeping to require the clerk of superior court to retain the records of an action filed under the law. The provisions described above are effective October 1, 2015.

Amended G.S. 14-50.43(d), effective June 19, 2015, (court order involving criminal street gangs) provides that a court order, which expires one year after entry, may be extended by the court for good cause established by the plaintiff after a hearing.

28. **S.L. 2015-94 (S 154): Amendments to immunity provisions for drug-related and alcohol-related overdoses.** The session law is effective for offenses committed on or after August 1, 2015. Amended G.S. 90-96.2 (drug-related overdose treatment; limited immunity) provides that a person may not be prosecuted for certain drug offenses (no offense changes from current law) if all of the following exist: (1) the person sought medical assistance for another person experiencing a drug-related overdose by contacting 911, a law enforcement officer, or emergency medical services personnel; (2) the person acted in good faith when seeking medical assistance and reasonably believed that he or she was the first to call for assistance; (3) the person provided his or her own name to 911 or to an officer on arrival; (4) the person did not seek medical assistance during the course of the execution of an arrest warrant or search warrant, or other lawful search; and (5) the evidence for prosecution of the offense was obtained as a result of the person seeking medical assistance for the drug-related overdose. Immunity also is extended to the overdose victim if all but (3), above, are satisfied. A person is not subject to arrest or revocation of pretrial release, probation, parole, or post-release if the arrest or revocation is based on the offense for which the person has immunity from prosecution. A law enforcement officer is not subject to civil liability when he or she in good faith arrests or charges a person later determined to be entitled to immunity under the statute. Amended G.S. 18B-302.2 (alcohol-related overdose treatment; limited immunity) makes similar changes as described above. Amended G.S. 90-106.2 provides that a pharmacist: (1) may dispense an opioid antagonist to a person with an opiate-related overdose pursuant to a prescription issued under the conditions set out in subsection (b) of the statute; and (2) is immune from civil or criminal liability for an authorized action.

29. **S.L. 2015-97 (H 560): Felony to assault hospital personnel and healthcare providers.** Amended G.S. 14-34.6(a)(3), effective for offenses committed on or after December 1, 2015, provides that it is a Class I felony to assault and cause physical injury to hospital personnel and licensed healthcare providers who are providing or attempting to provide health care services to a patient in a hospital. The current statute describes the victims as "emergency department personnel: physicians, physician assistants, nurses, and licensed nurse practitioners."

30. **S.L. 2015-98 (H 909): Various changes to Alcohol Beverage Control Commission laws.** This session law makes various ABC law changes. (1) The sale of antique spirituous liquor is authorized and regulated, effective on the adoption (no later than September 1, 2015) of temporary rules by the ABC Commission. (2) Amended G.S.18B-102, effective June 19, 2015, makes it a Class 1 misdemeanor when a person manufactures, sells, transports, consumes, possesses, etc., powdered alcohol, which is defined in amended G.S. 18B-101. (3) Effective June 19, 2015, the Eastern Band of Cherokee Indians tribal alcoholic beverage control commission is authorized to issue wine shipper permits and commercial ABC permits, and it is made clear that the commission maintains the exclusive authority to issue certain permits. (4) Distillery permit holders are authorized to sell spirituous liquor distilled on premises to visitors of the distillery for consumption off the premises, effective on the adoption (no later than October 1, 2015) of temporary rules by the ABC Commission. (5) Effective June 19, 2015, certain ABC permittees are allowed to sell cider in certain containers for consumption off the permitted premises and technical changes are made to the laws concerning the sale of malt beverages in growlers. (6) Effective June 19, 2015, alternating proprietorships for breweries are authorized. (7) Effective June 19, 2015, the holder of a brewery permit is allowed to sell malt beverages to a nonresident wholesaler if the malt beverages are shipped from the brewery to licensed wholesalers. (8) Effective June 19, 2015, the ABC Commission is authorized to issue guest room cabinet permits to certain 18-hole golf courses.

31. **S.L. 2015-105 (S 212): Retired law enforcement officer's qualifications for concealed handgun permit.** Amended G.S. 14-415.12A, effective October 1, 2015, provides that a person applying for a concealed handgun permit who is a qualified retired law enforcement officer and has met the standards for handgun qualification for active officers within the last 12 months satisfies the requirement that an applicant successfully complete an approved firearms safety and training course.

32. **S.L. 2015-108 (S 621): Division of Motor Vehicles may send vehicle registration renewal notification by e-mail to owner.** Amended G.S. 20-66(a) provides that upon receiving written consent from the vehicle owner, the Division of Motor Vehicles may send the required notice of renewal of a vehicle registration electronically to an e-mail address provided by the owner. A similar provision is added to G.S. 105-330.5(b) so the Property Tax Division of the Department of Revenue or a third-party contractor may send by e-mail a copy of the combined tax and registration notice for a registered classified motor vehicle. This session law is effective January 1, 2016.

33. **S.L. 2015-123 (S 578): Transfer of abuse and neglect investigations in child care facilities to Division of Child Development and Early Education in Department of Health and Human Services.** This session law, effective January 1, 2016, transfers investigations of child abuse and neglect occurring in a child care facility from a county social services department to the Department of Health and Human Services (hereafter, Department), Division of Child Development and Early Education. New G.S. 110-105.3 describes the investigative authority as applicable to instances of child maltreatment in child care facilities. Child maltreatment is defined as any act or series of acts of commission or omission by a caregiver that results in harm, potential for harm, or threat of harm to a child, including physical, sexual, and psychological abuse, failure to provide for the physical, emotional, or medical well-being of a child, and failure to properly supervise children that results in exposure to potentially harmful environments. The statute sets out in detail the investigative duties and responsibilities of the Department and others, including requiring the Department to contact law enforcement when the report alleges maltreatment that would be considered misdemeanor or felony child abuse. The Department may also request the assistance of local law enforcement or a county department of social services. New G.S. 110-105.4 requires that any person who has cause to suspect that a child in a child care facility had been maltreated or has died as the result of maltreatment in a child care facility, must report the maltreatment to the Department (and not the county department of social services), and specifies the content of the report and that it may be made orally, by telephone, or in writing. The Department must notify the State Bureau of Investigation within 24 hours or on the next workday on receiving a report of maltreatment involving sexual abuse of a child in a child care facility or of suspecting sexual abuse occurred there when assessing a report based on different maltreatment grounds. New G.S. 110-105.5 requires the Department to establish and maintain a Child Maltreatment Registry containing the names of all caregivers who have been confirmed by the Department of having maltreated a child in a child care facility. New G.S. 110-105.6 sets out penalties for child maltreatment in child care facilities, including (1) that child maltreatment is a violation of Article 7 of G.S. Chapter 110, licensure standards, and licensure laws; (2) various departmental administrative actions, including summary suspension, revocation of a facility's child care license, and placement on the Child Maltreatment Registry; and (3) unannounced visits by the Department to determine whether corrective action by the facility has occurred.

34. **S.L. 2015-124 (H 55): North Carolina State University included in law permitting fireworks.** Amended G.S. 14-410(a1)(3) and 14-413, effective Jun 29, 2015, permit fireworks on lands or

buildings in Wake County owned by The University of North Carolina or North Carolina State University.

35. **S.L. 2015-125 (H 148): Moped owners must have insurance.** Various provisions of G.S. Chapters 20 and 58 are amended, effective for offenses committed on or after July 1, 2016 (note the year in this date) as follows: They provide that in order to register a moped, a person must have proof of financial responsibility for the operation of the moped, which requires proof of a person's ability to respond to damages for liability in the same amounts required for operators of other types of motor vehicles. Because the financial responsibility requirement is tied to the registration requirement, liability insurance covering the operation of the moped is only required if the moped is to be operated on a street or highway. The Rate Bureau does not promulgate rates for liability insurance or theft and physical damage insurance on mopeds. Instead rates are regulated through Article 40 of Chapter 58. Moped liability insurance or theft and physical damage insurance may, however, be added as an endorsement to a liability and physical damage policy issued for another type of motor vehicle. In addition, liability insurance on mopeds cannot be ceded to the reinsurance facility.

    Amended G.S. 20-286(10), effective July 1, 2015, clarifies that the sale and manufacture of mopeds is not subject to the motor vehicle dealers and manufacturers licensing law. Amended G.S. 20-53.4, effective July 1, 2015, provides that a moped owner is not required to apply for, and the Division of Motor Vehicles is not required to issue, a certificate of title.

36. **S.L. 2015-135 (S 423): Application for limited learner's permit and provisional driver's license by minor in legal custody of social services department.** Amended G.S. 20-11(i), effective October 1, 2015, adds to the list of people other than the applicant who may sign an application for a limited learner's permit or provisional driver's license by a person under 18 years old, with respect to a minor in the legal custody of a county social services department, to include a guardian ad litem and the director of the department, among others.

37. **S.L. 2015-141 (S 286): Electronic cigarettes, cigars, etc., regulated.** New G.S. 14-401.18A, effective for offenses committed on or after December 1, 2015, makes it a Class A1 misdemeanor for any person, firm, or corporation to sell, offer for sale, or introduce into commerce in North Carolina (1) an e-liquid container unless the container has child-resistant packaging; and (2) an e-liquid container for an e-liquid product containing nicotine unless the packaging states the product contains nicotine. The statute defines "child-resistant packaging," "e-liquid" (liquid product, whether or not containing nicotine, intended to be vaporized and inhaled as vapor product), "e-liquid container" (container of e-liquid but term excludes container holding liquid intended for use in vapor product if container is pre-filled and sealed by manufacturer and not intended to be opened by consumer), and "vapor product" (term includes e-cigarette, e-cigar, e-cigarillo, and e-pipe). A violator of these provisions is liable in damages to any person injured as a result of the violation.

38. **S.L. 2015-144 (H 640): Wildlife law changes.** This session law makes several changes affecting wildlife laws, but this summary will focus on just two of them. Amended G.S. 113-276.3(d), effective October 1, 2015, adds a third or subsequent conviction of G.S. 14-159.6(a) (trespass on posted property to hunt, fish, or trap without written permission) to the list of offenses for which there is a two-year license or permit suspension. Current G.S. 103-2 prohibits hunting on Sunday except in defense of one's property and under other limited exceptions. Amended G.S. 103-2, effective October 1, 2015, adds a provision to provide that a landowner or member of the landowner's family, or any person with the landowner's permission, may hunt with firearms on Sunday on the landowner's property, except for the following Sunday limitations (1) hunting between 9:30 a.m.

and 12:30 p.m.is prohibited, except on controlled hunting preserves; (2) hunting of migratory birds is prohibited; (3) using a firearm to take deer that are run or chased by dogs is prohibited; (4) hunting within 500 yards of a place of worship or accessory structure or within 500 yards of a residence not owned by the landowner is prohibited; and (5) hunting in a county with a population greater than 700,000 people is prohibited. A violation of G.S. 103-2 remains a Class 3 misdemeanor. Amended G.S. 153A-129 allows a county to adopt an ordinance (with certain required provisions) prohibiting hunting on Sunday as allowed under G.S. 103-2, but the ordinance cannot take effect until October 1, 2017.

39. **S.L. 2015-145 (H 255): Building code enforcement changes.** This session law, effective October 1, 2015, makes many changes concerning the North Carolina Building Code, but only a few will be summarized here. Amended G.S. 153A-352 (county) and 160A-412 (city) require that (1) inspections be done "in a timely manner" (quoted words added); and (2) inspectors must conduct all inspections requested by the permit holder for each scheduled inspection visit when performing inspections as required by the state building code. For each requested inspection, the inspector must inform the permit holder when the work inspected is incomplete or otherwise fails to meet the requirements of the state residential code for one- and two-family dwellings. Amended G.S. 153A-356 (county) and 160A-416 (city), which currently make it a Class 1 misdemeanor when an inspector willfully fails to perform duties, provides that it is not a violation when the county or city, its inspection department, and inspectors accept a signed written document of compliance with the state building code or residential code for one- and two-family dwellings from a licensed architect or engineer under new G.S. 153A-352(c) or new 160A-412(c).

40. **S.L. 2015-150 (H 273): DWI changes concerning deferred prosecution and conditional discharge, expungement, and sentencing hearing when withdrawal of trial de novo appeal.** Amended G.S. 15A-1341(a), effective for an order placing a person on probation on or after December 1, 2015, provides that if the person is being placed on probation for a conviction of impaired driving under G.S. 20-138.1, subsections (a1) and (a4) (deferred prosecution and conditional discharge, respectively, for a person charged with a Class H or I felony or a misdemeanor), and subsections (a2) and (a5) (deferred prosecution and conditional discharge for drug treatment program), do not apply and the person is ineligible for deferred prosecution and conditional discharge under these provisions.

    Amended G.S. 15A-145 (expunction of misdemeanor conviction for first offender under 18), G.S. 15A-145.4 (expunction of nonviolent felony conviction for first offender under 18), and G.S. 15A-145.5 (expunction of certain nonviolent misdemeanor or felony convictions without age limitation), prohibit an expunction for any offense involving impaired driving as defined in G.S. 20-4.01(24a). These changes are effective for petitions filed or pending on or after December 1, 2015.

    Amended G.S. 20-38.7 (appeal to superior court after conviction of impaired driving and other implied consent offenses), effective for appeals filed on or after December 1, 2015, deletes the provision that required the consent of a prosecutor and superior court judge to remand a case to district court, thus making remand on this issue subject to G.S. 15A-1431 and the consent provision set out in (3), below. It also provides that when an appeal is withdrawn or a case is remanded, the district court must hold a new sentencing hearing and consider any new convictions unless one of the following conditions is met: (1) if the appeal is withdrawn under G.S. 15A-1431(c) (within 10 days of entry of district court judgment), the prosecutor has certified in writing to the clerk that there are no new sentencing factors; (2) if the appeal is withdrawn and remanded under G.S. 15A-1431(g) (before calendaring of case for trial de novo), the prosecutor has certified in writing to the clerk that there are no new sentencing factors; (3) if the appeal is withdrawn and remanded under

G.S. 15A-1341(h) (after calendaring of case for trial de novo), the prosecutor has certified in writing to the clerk that he or she consents to the withdrawal and remand and that there are no new sentencing factors.

41. S.L. 2015-152 **(H 39): Criminal penalty when illegal operation of amusement device causes serious injury or death.** This session law makes several changes to laws concerning an "amusement device" (defined in G.S. 95-111.3), including increasing the civil penalties set out in G.S. 95-111.13, but this summary focuses on one criminal provision. Amended G.S. 95-113.13, effective for a violation occurring on or after December 1, 2015, provides that a person who willfully violates any provision of Article 14B of Chapter 95 of the General Statutes, which includes the illegal operation of an amusement device, and the violation causes serious injury to or death of any person is guilty of a Class E felony, which must include a fine.

42. S.L. 2015-154 **(H 766): Hemp extract exemption modified.** This session law makes several changes to the law permitting the use of hemp extract as an alternative treatment for intractable epilepsy, but this summary focuses on one criminally-related provision. Amended G.S. 90-94.1, effective for offenses committed on or after August 1, 2015, modifies the permissible amount of hemp extract as (1) composed of less than nine-tenths of one percent (current law, three-tenths of one percent) tetrahydrocannabinol by weight, and (2) composed of at least five percent (current law, ten percent) cannabidol by weight.

43. S.L. 2015-162 **(H 341): Various drugs added to Chapter 90 controlled substances lists.** This session law, effective for offenses committed on or after December 1, 2015, adds various drugs to Schedules I, V, and VI in G.S. 90-89, 90-90, and 90-94, respectively. The descriptions of the added drugs are too lengthy and numerous to be listed in this summary, except to note that multiple "NBOMe Compounds" are added to Schedule I.

44. S.L. 2015-163 **(H 6): Autocycle defined and regulated.** This session law, effective October 1, 2015, regulates autocycles under various provisions of Chapter 20 of the General Statutes. Amended G.S. 20-4.01(27) defines an "autocycle" as a three-wheeled motorcycle that has a steering wheel, pedals, seat safety belts for each occupant, antilock brakes, air bag protection, completely enclosed seating that does not require the operator to straddle or sit astride, and is otherwise manufactured to comply with federal safety requirements for motorcycles.

45. S.L. 2015-165 **(H 350): DMV to restore driver's license of person adjudicated to be restored to competency.** New G.S. 20-17.1A, effective October 1, 2015, provides that if otherwise eligible for a driver's license under G.S. 20-7 and other statutes, the Division of Motor Vehicles must restore the driver's license of a person adjudicated to be restored to competency under G.S. 35A-1130 when it receives notice from the clerk of the court in which the adjudication was made.

46. S.L. 2015-173 **(H 59): Amendments to statutes admitting reports of forensic and chemical analysis and remote testimony; no reporting provided for ex parte or emergency hearings before judge under General Statutes Chapters 50B and 50C.** Effective for notices of intent to introduce a statement or report provided by the State on or after July 31, 2015, this session law amends G.S. 8-58.20(f) and (g) (forensic analysis report, affidavit, and statement admissible), G.S. 15A-1225.3(b) (remote testimony by forensic analyst permitted), G.S. 20-139.1(c1) (report of chemical analysis of blood or urine admissible), G.S. 20-139.1(c3) (establishing chain of custody of tested or analyzed blood or urine without calling unnecessary witnesses), G.S. 20-139.1(c5) (remote testimony

permitted by analyst about results of chemical analysis of blood or urine), G.S. 90-95(g) (report of drug analysis admissible), and G.S. 90-95(g1) (establishing chain of custody of analyzed drug evidence without calling unnecessary witnesses), to provide if the defendant's attorney or a defendant, if unrepresented, fails to file a written objection as provided in these statutes, then "the objection shall be deemed waived and" the specified report, affidavit, statement, or remote testimony must be admitted into evidence (quoted language is added to each statute). Amended G.S. 7A-198 (reporting of civil trials) provides that reporting will not be provided in ex parte or emergency hearings before a judge under General Statutes Chapter 50B (domestic violence protective orders) and Chapter 50C (civil no-contact orders), effective for hearings conducted on or after July 31, 2015.

47. **S.L. 2015-176 (S 192): Electronic or fax transmission of certain orders; other changes.** Effective August 5, 2015, amended G.S. 50B-3 (domestic violence protective orders), G.S. 50C-9 (civil no-contact orders), and new G.S. 122C-210.3 (involving involuntary commitment orders) provide that law enforcement agencies must accept receipt of copies of an order issued by the court clerk by electronic or fax transmission for service on a defendant. Effective August 5, 2015, amended G.S. 122C-251(d) states "[t]o the extent feasible" (quoted words added) a city or county must provide a driver or attendant who is the same sex as the respondent to transport the respondent for an involuntary commitment matter. Within 60 days of the session law becoming effective (August 5, 2015), the Administrative Office of the Courts must solicit input from court clerks concerning the use of the term "costs" rather than "court costs" on the motor vehicle citation form, and must make changes as appropriate based on their input, but this provision does not require the replacement of citation forms until the printing of new forms is otherwise necessary.

48. **S.L. 2015-180 (H 446): Bail bondsmen amendments.** Among the changes made in this session law: (1) effective for applications for bondsman licenses filed on or after August 5, 2015, amended G.S. 58-71-50(b) raises the minimum age from 18 to 21 years old to apply as a bail bondsman or runner; and (2) effective August 5, 2015, amended G.S. 58-71-200 requires the Administrative Office of the Courts (AOC) to allow professional bondsmen, surety bondsmen, and runners with access to the AOC's real-time civil information systems (current law is limited to access to its criminal information systems).

49. **S.L. 2015-181 (H 383): Reorganize, rename, and renumber various rape and sexual offenses.** This session law reorganizes, renames, and renumbers various rape and sexual offenses, and makes conforming changes throughout the General Statutes, effective for offenses committed on or after December 1, 2015. It also contains a savings clause to permit prosecutions committed under prior laws. Only some of the many changes are included in this summary.

    The provisions of current G.S. 14-27.2 (first-degree rape) are split into new G.S. 14-27.21 (first-degree forcible rape) and G.S. 14-27.24 (first-degree statutory rape). Current G.S. 14-27.3 (second-degree rape) is recodified as G.S. 14-27.22 and renamed second-degree forcible rape.

    Current G.S. 14-27.2A (rape of a child; adult offender) is recodified as G.S. 14-27.23 and renamed statutory rape of a child by an adult. Current G.S. 14-27.7A (statutory rape or sexual offense of person who is 13, 14, or 15 years old) is recodified as G.S. 14-27.25 and renamed statutory rape of person who is 15 years of age or younger. The changes to the elements of this offense that were made earlier in the 2015 session in S.L. 2015-62 are reflected in the new statute, and the sexual offense elements in prior G.S. 14-27.7A are recodified in new G.S. 14-27.30, which is renamed statutory sexual offense of person who is 15 years of age or younger.

    Similar changes are made with the forcible and statutory sexual offense statutes as were made

with the forcible and statutory rape statutes, described above.

The new codifications of rape, sexual offense, and related statutes are as follows: G.S. 14-27.20 (definitions); G.S. 20-27.21 (first-degree forcible rape); G.S. 14-27.22 (second-degree forcible rape); G.S. 14-27.23 (statutory rape of child by adult); G.S. 14-27.24 (first-degree statutory rape); G.S. 14-27.25 (statutory rape of person 15 years of age or younger); G.S. 14-27.26 (first-degree forcible sexual offense); G.S. 14-27.27 (second-degree forcible sexual offense); G.S. 14-27.28 (statutory sexual offense with child by adult); G.S. 14-27.29 (first-degree statutory sexual offense); G.S. 14-27.30 (statutory sexual offense with person 15 years of age or younger); G.S. 14-27.31 (sexual activity by substitute parent or custodian); G.S. 14-27.32 (sexual activity with student); G.S. 14-27.33 (sexual battery); G.S. 14-27.34 (no defense victim is spouse of person committing act); G.S. 14-27.35 (no presumption as to incapacity); and G.S. 14-27.36 (evidence required in prosecutions under this Article).

The two distinct offenses in current G.S. 14-27.7 (intercourse and sexual offenses with certain victims) are separated into two new statutes and renamed: G.S. 14-27.31 (sexual activity by a substitute parent or custodian) and G.S. 14-27.32 (sexual activity with a student). [Note: Although the punishment change in S.L. 2015-44 from a Class A1 misdemeanor to a Class I felony was not carried forward in statutory language in new G.S. 14-27.32, it still became law based on the provisions of G.S. 120-20.1(b1).]

50. **S.L. 2015-182 (H 397): Disposition of seized assets when person convicted of exploitation of older adult or disabled.** Current G.S. 14-112.2 and 14-112.3 allow a district attorney to apply to a court before trial to freeze or seize the assets of a defendant who may divesting himself or herself of assets that could be seized if the defendant is convicted of G.S. 14-14-112.2 (exploitation of an older adult or disabled adult). This session law, effective for offenses committed on or after October 1, 2015, specifies in detail (1) the contents and procedure involved with a court order to freeze or seize assets; and (2) how the seized assets must be handled to satisfy an order of restitution. Amended G.S. 7A-308 provides that the court fees set out in subdivision (a)(11) (concerning recording or docketing document) do not apply when the service is performed or documents are filed under G.S. 14-112.3.

51. **S.L. 2015-183 (H 134): Minor who solicits as a prostitute is immune from prosecution of solicitation of prostitution.** Amended G.S. 14-205.1, effective for violations occurring on or after August 5, 2015, provides that a minor (person under 18 years old) who solicits as a prostitute is immune from prosecution of solicitation of prostitution under this statute. Instead, the person must be taken into temporary protective custody as an undisciplined juvenile under Article 19 of Chapter 7B of the General Statutes. A law enforcement officer who takes the minor into custody must immediately report an allegation of a violation of G.S. 14-43.11 (human trafficking) and G.S. 14-43.13 (sexual servitude) to the county social services director in the county where the minor resides or is found, who must initiate an investigation into child abuse or child neglect within 24 hours.

52. **S.L. 2015-185 (H 229): Limited privilege may include driving to and from place of religious worship.** Amended G.S. 20-179.3, effective for limited driving privileges issued on or after October 1, 2015, allows driving to and from a place of religious worship.

53. **S.L. 2015-186 (H 529), as amended by S.L. 2015-264 (S 119): Punishments and revocations changed for driving while license revoked and other Chapter 20 changes.** [Note: For a more complete discussion of these two session laws in blog posts from which this summary is excerpted, see Shea Denning, *Technical Corrections Act Clarifies New DWLR Law*, North Carolina Criminal Law Blog (UNC

School of Government, October 6, 2015), http://nccriminallaw.sog.unc.edu/technical-corrections-act-clarifies-new-dwlr-law/, and Shea Denning, *General Assembly Approves Relief from the Endless Loop of License Revocation,* North Carolina Criminal Law Blog (UNC School of Government, August 3, 2015), http://nccriminallaw.sog.unc.edu/general-assembly-approves-relief-from-the-endless-loop-of-license-revocation/.] This session law is effective for offenses occurring on or after December 1, 2015. There also is a savings clause for prosecutions of offenses occurring before that date.

Driving while license revoked convictions and revocations. Two types of driving while license revoked (hereafter, DWLR) currently codified in G.S. 20-28(a) are assigned to their own subsections. DWLR for impaired driving, a Class 1 misdemeanor, is codified in amended G.S. 20-28(a1). DWLR generally, a Class 3 misdemeanor, remains in G.S. 20-28(a). The punishment for driving without reclaiming a driver's license, punished as a Class 3 misdemeanor, is recodified in amended G.S. 20-28(a2) and people who are eligible for the reduced punishment under the circumstances set out in this subsection include those convicted under G.S. 20-28(a) *or* (a1). Driving after notification or failure to appear, a Class 1 misdemeanor, is recodified in new G.S. 20-28(a3).

A person convicted of DWLR under G.S. 20-28(a) will no longer be subject to a mandatory additional period of license revocation. A person convicted of violating G.S. 20-28(a1) or (a3) still will be subject to the same automatic revocation periods. A person punished for driving without a reclaimed license under G.S. 20-28(a2) is not subject to an automatic additional revocation period that exists under current law.

A person's license also is subject to automatic revocation under current G.S. 20-28.1 if the person is convicted of a motor vehicle moving offense that was committed while the person's license was revoked. These session laws amend G.S. 20-28.1(a) to provide that a violation of G.S. 20-7(a) (no operator's license), 20-24.1 (failure to appear or pay fine, penalty, or costs for motor vehicle offense), or G.S. 20-28(a) or (a2) shall not be considered a motor vehicle moving offense unless the offense occurred in a commercial motor vehicle or the person held a commercial driver's license at the time of the offense.

Ignition interlock amendment. Amended G.S. 20-17.8(f) provides that a person subject to an ignition interlock restriction who violates the restriction commits the offense of DWLR for impaired driving under G.S. 20-28(a1) and is subject to the punishment and license revocation as provided in that subsection.

DWI sentencing change. Amended G.S. 20-179(c)(2) changes the description of the DWI grossly aggravating factor as driving while one's driver's license was revoked pursuant to G.S. 20-28(a1). Thus, driving while one's license is revoked for impaired driving or violating an ignition interlock restriction both are included in this grossly aggravating factor.

54. S.L. 2015-188 (S 345): Limit time motor vehicle can be impounded after collision. New G.S. 20-166.3, effective for motor vehicles impounded on or after August 1, 2015, provides that a motor vehicle that is towed and stored at a law enforcement agency's direction after a collision may be held for evidence for not more than 20 days without a court order. Without such an order, the vehicle must be released to the vehicle owner, insurer, or lien holder on payment of the towing and storage fees. This new statute does not apply to a motor vehicle seized as a result of a violation of law or abandoned by the owner.

55. S.L. 2015-190 (S 182): Automatic license plate reader systems regulated. New Article 3D of Chapter 20 of the General Statutes, effective December 1, 2015, requires state and local law enforcement agencies using an automatic license plate reader system to adopt a written policy governing its use before the system is operational, and requires the policy to address nine issues set out in new G.S. 20-183.23. Captured plate data obtained by the system, operated by or on behalf of a law

enforcement agency for law enforcement purposes, must not be preserved for more than 90 days after the date the data is captured, unless there is a preservation request complying with new G.S. 20-183.24(c) or a state or federal search warrant is issued. Captured plate data is confidential and not a public record. Data must not be disclosed except to a federal, state, or local law enforcement agency for a legitimate law enforcement or public safety purpose pursuant to a written request from a requesting agency.

56. **S.L. 2015-191 (S 183): Eliminate confinement in response to violation for misdemeanants sentenced under Structured Sentencing Act.** This session law is effective for a defendant placed on probation on or after December 1, 2015. Amended G.S. 15A-1344(d2), exempts a misdemeanant placed on probation under the Structured Sentencing Act (SSA) from the provision allowing a court, in response to a probation violation other than the commission of new criminal offense or absconding, to impose a period of confinement in response to violation (CRV) of up to 90 consecutive days. For those misdemeanants, the court may, under the amended law, impose a two- or three-day term of confinement under G.S. 15A-1343(a1)(3) in response to a technical violation (a violation other than commission of a crime or absconding) of probation. The court may not revoke probation for an affected misdemeanant until he or she has received two periods of short-term confinement, imposed either by a judge or by a probation officer through delegated authority.

    For an extensive discussion of this session law, see Jamie Markham, *No More CRV for Structured Sentencing Misdemeanants*, North Carolina Criminal Law Blog (UNC School of Government, August 13, 2015), http://nccriminallaw.sog.unc.edu/no-more-crv-for-structured-sentencing-misdemeanants/.

57. **S.L. 2015-195 (H 562): Various firearm law amendments.** This lengthy session law, which has varying effective dates, makes multiple changes to firearm laws. It also contains a savings clause for prosecutions of offenses committed before the effective dates. Not all of its provisions are summarized here.

    Carrying concealed weapon, weapon on educational property, or weapon on State Capitol. All of the following changes are effective for offenses committed on or after July 1, 2015.

    The session law adds the following people to the exemptions from the offense of carrying a concealed weapon under G.S. 14-269: (1) a district attorney may carry a concealed weapon while in the courtroom; (2) a person employed by the Department of Public Safety who has been designated in writing by the secretary of the department, possesses written proof of the designation, has a concealed weapon handgun permit or a permit considered valid under G.S. 14-415.24 (reciprocity), and there is no drug or alcohol consumption or drug or alcohol remaining in the person's body; and (3) an administrative law judge who has a concealed handgun permit or a permit considered valid under G.S. 14-415.24 (reciprocity), and there is no drug or alcohol consumption or drug or alcohol remaining in the person's body.

    The session law exempts from the offense in G.S. 14-269.4 (weapons on certain State property and in courthouses) a person who possesses in the State Capitol Building or on its grounds an ordinary pocket knife in a closed position.

    Amended G.S. 14-269.2(k) (exemption for the offense of weapons on educational property when person has concealed handgun permit or exempt from obtaining a permit) adds to the exemption (1) a person who has a handgun concealed on the person and the person remains in the locked vehicle and only unlocks the vehicle to allow entrance or exit of another person, or (2) the person is within a locked vehicle and removes the handgun from concealment only for the time reasonably necessary to move the handgun (i) from concealment on the person to a closed compartment or container within the vehicle, or (ii) from within a closed compartment or container within the

vehicle to concealment on the person. New G.S. 14-269.2(l) adds an affirmative defense to offenses in subsections (b) and (f) that the person was authorized to have a concealed weapon in a locked vehicle under subsection (k) (see above) and removed the handgun from the vehicle only in response to a situation in which a deadly weapon is justified.

Firearms at State Fair regulated. New G.S. 106-503.2, effective August 5, 2015, provides that the Commissioner of Agriculture is authorized to prohibit the carrying of firearms on the State Fairgrounds during the State Fair, with exemptions for a person (1) with a concealed handgun permit or exempt from obtaining a permit and keeping a weapon in the person's locked vehicle as specified in the statute; and (2) exempted officers under G.S. 14-269(1), (2), (3), (4), or (5).

Concealed handgun permit changes. Amended G.S. 14-415.12(b) (mandatory ground to deny concealed handgun permit), applicable to permit applications submitted on or after July 1, 2015, revises the offenses listed in subdivision (b)(8) and adds the following grounds: (1) adjudicated guilty of or received PJC or suspended sentence for misdemeanor crimes of violence under G.S. 14-33(c)(1) (assault inflicting serious injury or with deadly weapon), 14-33(c)(2) (assault on female), 14-33(c)(3) (assault on child), 14-33(d) (assault on person with personal relationship), 14-277.3A (stalking), 14-318.2 (child abuse), 14-134.3 (domestic criminal trespass), 50B-4.1 (violation of domestic violence protection order), or former 14-277.3 (stalking); (2) prohibited from possessing firearm under federal law for conviction of misdemeanor crime of domestic violence; and (3) adjudicated guilty of or received PJC or suspended sentence for assault on officer and others.

Amended G.S. 14-415.13(a), effective for applications submitted on or after October 1, 2015, requires that the sheriff must provide the application form for a concealed handgun permit electronically, and the sheriff must not request employment information, character affidavits, additional background checks, photographs, or other information unless specifically permitted by Article 54B of Chapter 14, which contains the concealed handgun permit provisions.

Amended G.S. 14-415.12(a), effective August 5, 2105, permits a person to apply for a concealed handgun permit who has been lawfully admitted for permanent residence under federal law.

Amended G.S. 14-415.15(a), effective for applications submitted on or after October 1, 2015, requires a sheriff to make a request for any records concerning the mental health or capacity of an applicant for a concealed handgun permit with 10 days of the receipt of items listed in G.S. 14-415.13 (application for permit).

Amended G.S. 14-415.23 (statewide uniformity for state and local government regulations of legally carrying concealed handgun), effective August 5, 2015, provides that a person adversely affected by any ordinance or regulation promulgated or caused to be enforced by an local government unit in violation of this statute may bring an action for declaratory and injunctive relief and for actual damages arising from the violation. A court must award the prevailing party in such an action reasonable attorneys' fees and court costs as authorized by law.

Amended G.S. 14-415.27 (expanded concealed handgun permit scope for certain public officials), effective for offenses committed on or after July 1, 2015, adds an administrative law judge and a person employed by the Department of Public Safety who has been designated in writing by the secretary of the department and possesses written proof of the designation.

Amended G.S. 14-415.21, effective for offenses committed on or after December 1, 2015, reduces the punishment for a person who has a concealed handgun permit and carries it in violation of G.S. 14-415.11(c)(8) (unauthorized to carry handgun on private premises when notice that concealed handgun is prohibited by sign or statement by person in charge) from a Class 1 misdemeanor to an infraction with a maximum $500 fine.

Moral character modification for applicant for pistol permit; other changes. Amended G.S. 14-404 (pistol permit application), applicable for permits issued on or after December 1, 2015: (1) adds a provision that for determining an applicant's good moral character to receive a pistol permit, the

sheriff shall only consider an applicant's conduct and criminal history for the five-year period immediately preceding the date of the application; and (2) requires that an application must be on a form created by the State Bureau of Investigation in consultation with the N.C. Sheriff's Association, and specifies the information that the applicant is required to submit.

Reporting of certain disqualifiers to National Instant Criminal Background Check System (NICS). New G.S. 14-409.43 (reporting to NICS), effective January 1, 2016, essentially replaces provisions of repealed G.S. 122C-54(d1) and G.S. 14-404(c1), with some additional changes. G.S. 122C-54.1 (restoration process to remove mental commitment bar) is recodified as G.S. 14-409.42. The Administrative Office of the Courts must use the sum of up to $20,000 available to it for the 2014-2015 fiscal year from the Court Information Technology Fund to comply with the changes in G.S. 14-409.43 applicable to the AOC and provide all historical records specified in the session law to the NCIS by May 31, 2019.

New fingerprint and related duties for law enforcement agencies. Amended G.S. 15A-502, effective October 1, 2015, imposes new fingerprint and related duties on law enforcement agencies.

New G.S. 15A-502(a2) requires an arresting law enforcement agency to fingerprint a person charged with the following misdemeanors and forward the fingerprints to the SBI: G.S. 14-134.3 (domestic criminal trespass), G.S. 15A-1382.1 (offenses involving domestic violence); G.S. 50B-4.1 (violation of domestic violence protection order); G.S. 20-138.1 (impaired driving); G.S. 20-138.2 (commercial impaired driving); G.S. 20-138.2A (operating commercial vehicle after consuming alcohol); G.S. 20-138.2B (operating various specialized vehicles after consuming alcohol); and G.S. 90-95(a)(3) (possessing controlled substance). For a discussion of this statute, see Jeff Welty, *Must Officers Now Arrest, Rather Than Cite, for Misdemeanor Marijuana Possession?,* North Carolina Criminal Law Blog (UNC School of Government, October 7, 2015), http://nccriminallaw.sog.unc.edu/must-officers-now-arrest-rather-than-cite-for-misdemeanor-marijuana-possession/.

New G.S. 15A-502(a3) requires an arresting law enforcement agency to cause a person charged with a crime to provide to the magistrate as much as possible of eight categories of information about the arrestee. Among them are: (1) name including first, last, middle, maiden, and nickname or alias; (2) social security number, and (3) relationship to the alleged victim and whether it is a "personal relationship" as defined by G.S. 50B-1(b).

New G.S. 15A-502(a4) requires an arresting law enforcement agency to cause a person charged with a misdemeanor assault, stalking, or communicating a threat and held under G.S. 15A-534.1 to be fingerprinted so the fingerprints can be forwarded to the SBI.

New G.S. 15A-502(a5) requires a magistrate to enter into the court information system all information about the arrestee provided by the arresting law enforcement agency.

(Note: G.S. 15A-502(a2) and (a4) were later amended in S.L. 2015-267 (H 735), and the summary above reflects those amendments.)

Statewide uniformity of local regulation of firearms. Amended G.S. 14-409.40(b) adds taxation, manufacture, and transportation to the statute's prohibition of county or municipal ordinances regulating firearms, ammunition, dealers in firearms, etc. New G.S. 14-409.40(h) provides that a person adversely affected by any ordinance in violation of the statute may bring an action for declaratory and injunctive relief and for actual damages arising from the violation. A court must award the prevailing party in the action reasonable attorneys' fees and court costs as authorized by law. All of these provisions are effective for ordinance violations occurring on or after December 1, 2015.

Chief law enforcement officer's certification when required by federal law concerning firearm. New G.S. 14-409.41, effective July 1, 2015, provides that when a chief law enforcement officer's certification is required by federal law or regulation to transfer or make a firearm, the officer must,

with 15 days of receipt of a request for certification, provide the certification if the applicant is not prohibited by state or federal law from receiving or possessing the firearm and is not subject to a proceeding that could result in a prohibition. An applicant whose request for certification is denied may appeal the decision to the district court of the district in which the request was made.

Provision concerning restoration of state firearm rights and its effect on restoring federal firearm rights. For an extensive analysis of this provision, located in section 6 of this session law, see John Rubin, *Restoring State Firearm Rights as a Condition for Restoring Federal Firearm Rights,* North Carolina Criminal Law Blog (UNC School of Government, September 14, 2015), http://nccriminallaw.sog.unc.edu/restoring-state-firearm-rights-as-a-condition-for-restoring-federal-firearm-rights/.

58. **S.L. 2015-198 (H 774): Death sentence execution procedures changed.** This session law is effective on August 5, 2015. Amended G.S. 15-190(a) allows a medical professional other than a physician (physician assistant, nurse practitioner, registered nurse, emergency medical technician, etc.) to monitor the injection of the required lethal substances and certify the fact of the execution. If a physician is not present at the execution, then a physician must be present on the premises and available to examine the body after the execution and pronounce the prisoner dead. Amended G.S. 150B-1 exempts execution procedures from contested case and rulemaking provisions of the Administrative Procedure Act. Amended G.S. 15-187 deletes the reference to a specific drug (ultrashort acting barbiturate) to be used during an execution. Amended G.S. 132-1.2 removes from the public records law the revelation of the name, address, etc., of any person or entity that manufactures, compounds, dispenses, etc., drugs or supplies obtained for an execution.

59. **S.L. 2015-201 (S 374): No joint enforcement agreement with National Marine Fisheries Service; study of future joint agreement authorized.** Amended G.S. 113-224, effective August 5, 2015, deletes the authority of the Fisheries Director to enter into an agreement with the National Marine Fisheries Service to allow Division of Marine Fisheries inspectors to accept delegation of law enforcement powers over matters within the jurisdiction of the Service. The Division of Marine Fisheries must conduct a 12-month study of the impacts, costs, and benefits of a joint enforcement agreement and whether authorization to enter into an agreement should be reenacted. The Division must submit its report to the Environmental Review Commission no later than October 15, 2016.

60. **S.L. 2015-202 (S 233): Automatic expunction of records when charge against person is dismissed based on identity theft or mistaken identity.** Amended G.S. 15A-147, effective for charges brought on or after December 1, 2015, provides that if a person is charged with a crime or infraction as a result of another person using the identifying information of the named person or mistaken identity, and the charge is dismissed, the prosecutor or other judicial officer who ordered the dismissal must provide notice to the court of the dismissal, and the court must order the expunction of all official records containing any entries concerning the person's apprehension, charge, or trial.

61. **S.L. 2015-210 (H 284): No fine for civil contempt; jury excuse for attending out-of-state postsecondary school.** Amended G.S. 5A-21 (civil contempt), effective for civil contempt orders entered on or after October 1, 2015, provides that a person found in civil contempt is not subject to the imposition of a fine. This amendment effectively overrules the ruling in *Tyll v. Berry*, ___ N.C. App. ___, 758 S.E.2d 411 (2014), that a trial court has discretion to impose a fine for civil contempt.

Amended G.S. 9-6 and 9-6.1, effective for excusal requests from jury service made on or after August 11, 2015, provides that a prospective juror who is summoned for jury service for a court session when the juror is taking classes or exams as a full-time student at an out-of-state

postsecondary education institution, must be excused from jury service on his or her request. The Administrative Office of the Courts (AOC), in consultation with the N.C. Conference of Clerks of Superior Court, must study excusals from jury service, including all of the current exemptions and examine whether an excuse should be granted for out-of-state work assignments. The AOC must report its findings and any recommendations to the Joint Legislative Oversight Committee on Justice and Public Safety and the General Assembly at the beginning of the 2016 legislative session.

62. **S.L. 2015-211 (H 814): Medical examiner appointments and training program.** Amended G.S. 130A-382, effective January 1, 2016: (1) requires the Chief Medical Examiner (CME) to appoint two or more county medical examiners for each county (current law, one or more); (2) requires county medical examiners to complete continuing education training as directed by the Office of the Chief Medical Examiner, with newly-appointed examiners completing mandatory orientation training within 90 days of their appointment, and the continuing education must include training concerning sudden unexpected death in epilepsy; and (3) the CME may revoke a county medical examiner's appointment for failure to adequately perform the duties of the office after providing the examiner with written notice of the basis for the revocation and an opportunity to respond.

63. **S.L. 2015-212 (H 566): Procedures established for show-up identifications, including application of procedures to law enforcement officers as eyewitnesses.** Amended G.S. 15A-284.52, effective for eyewitness identifications and show-ups conducted on or December 1, 2015, defines a "show-up" as a procedure in which an eyewitness, including a law enforcement officer, is presented with a single live suspect to determine whether the eyewitness is able to identify the perpetrator of a crime. It requires all officers who conduct a show-up to meet all of the following requirements:

    (1) a show-up may only be conducted when a suspect matching the perpetrator's description is located in close proximity in time and place to the crime, or there is a reasonable belief that the perpetrator has changed his or her appearance in a close time to the crime, and only if there are circumstances that require the immediate display of a suspect to an eyewitness;

    (2) a show-up may only be performed using a live suspect and may not be conducted with a photograph; and

    (3) investigators must photograph a suspect at the time and place of the show-up to preserve a record of the suspect's appearance when the show-up procedure was conducted.

    The session law also requires the N.C. Criminal Justice Education and Training Standards Commission to develop a policy concerning standard procedures to conduct show-ups, which will apply to all law enforcement agencies beginning August 1, 2016, and must address all of the following, in addition to the new statutory provisions: (1) standard instructions for an eyewitness; (2) confidence statements by the eyewitness, including information concerning the eyewitness's vision, the circumstances of the events witnessed, and communications with other eyewitnesses, if any; (3) training of officers on how to conduct show-ups; and (4) any other matters the commission considers appropriate.

64. **S.L. 2015-215 (H 371): National Guard member's exemption from concealed weapon law; civil liability for terrorist act.** New G.S. 14-269(b)(3a), effective August 18, 2015, exempts from the law prohibiting carrying a concealed weapon a member of the N.C. National Guard who has been designated in writing by the Adjutant General and has a concealed handgun permit and is discharging official duties, and the member does not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or unlawful controlled substance remains in the member's body. Current G.S. 14-269(b)(3) exempts officers and soldiers of the National Guard when called into actual service.

New G.S. 14-10.1(e), effective for acts committed on or after October 1, 2015, provides that any person whose property or person is injured by a violation of G.S. 14-10.1 (terrorism) may sue and recover treble damages, costs, and attorneys' fees under new G.S. 1-539.2D, which also is enacted by this session law.

65. **S.L. 2015-218 (H 184): Time limitation on confidentiality of public records, exemptions.** New G.S. 132-11, effective August 18, 2015 and applicable to a public record in existence on or created after that date, provides that all restrictions on access to public records expire 100 years after the creation of the record. However, the statute does not apply to various records, including any record that (1) is ordered to be sealed by any state or federal court, except as provided by that court; (2) is prohibited from being disclosed under federal law, rule, or regulation; and (3) is a record of a juvenile, probationer, parolee, post-releasee, or prison inmate, including medical and mental health records.

66. **S.L. 2015-225 (S 699): Law enforcement officer's personal information protected from disclosure.** G.S. 153A-98 (privacy of county employee personnel records) and G.S. 160A-168 (privacy of city employee personnel records), are identically amended to provide that even if considered part of an employee's personnel file, the following information of a sworn law enforcement officer shall not be disclosed to an employee or any other person, unless disclosed under G.S. 132-1.4 (criminal investigative records released by court order) or G.S. 132-1.10 (limited release of social security numbers and other personal identifying information), or for the personal safety of the officer or any other person residing in the same residence: (1) information that might identify the residence of the officer; (2) emergency contact information, or (3) any identifying information defined in G.S. 14-113.20 (identity theft). Amended G.S. 132-1.7 (sensitive pubic security information) provides that public records shall not include mobile telephone numbers issued by a local, county, or state government to: (1) a sworn law enforcement officer or nonsworn employee of a public law enforcement agency; (2) a fire department employee; and (3) an employee whose duties include responding to an emergency. This session law is effective October 1, 2015.

67. **S.L. 2015-228 (S 675): Limit frequency of required parole review of inmates convicted of sexually violent offenses committed before October 1, 1994.** This session law amends repealed G.S. 15A-1371(b), which is still applicable to sentences imposed for offenses committed before October 1, 1994 (the Structured Sentencing Act became effective for offenses committed on or after that date), to provide that the Parole Commission (now, the Post-Release Supervision and Parole Commission) must review cases when the prisoner was convicted of a sexually violent offense as defined in G.S. 14-208.6(5), and in its discretion give consideration of parole every second year instead of every year. This session law is effective for parole reviews conducted on or after October 1, 2015.

68. **S.L. 2015-229 (S 185): Clarify credit for time served.** Amended G.S. 15-196.1 provides that credit against a sentence for confinement in correctional, mental, or other institutions applies as a result of the charge that culminated in the sentence "or the incident from which the charge arose" (quoted language is added). The proviso in the statute is rewritten so that credit does not include any time that a defendant has spent in custody as a result of a pending charge while serving a sentence imposed for another offense (the current statute bars credit for any time that is credited on the term of a previously imposed sentence to which the defendant is subject). This session law is effective December 1, 2015. For a detailed discussion of this session law, see Jamie Markham, *New*

Jail Credit Rules Signed into Law, North Carolina Criminal Law Blog (UNC School of Government, August 27, 2015), http://nccriminallaw.sog.unc.edu/new-jail-credit-rules-signed-into-law/.

69. **S.L. 2015-231 (H 268): Highway obstruction quick clearance requirements amended.** Amended G.S. 20-161(f), which permits the immediate removal from the state highway system of wrecked, abandoned, burned, etc., vehicles interfering with regular traffic flow, requires before doing so the concurrence of the Department of Transportation and an investigating law enforcement officer (the session law adds the concurrence of the officer). This provision in this session law is effective August 25, 2015, and applies to any obstruction to traffic arising on or after 12:01 a.m. of the day following that date.

70. **S.L. 2015-232 (S 446): Changes to regulation of unmanned aircraft systems (drones).** This session law, effective August 25, 2015, makes changes to the regulation of unmanned aircraft systems, commonly known as drones. Provisions in the 2013 and 2014 appropriation acts are amended to provide that until December 15, 2015, the State Chief Information Officer (CIO) has the authority to approve or disapprove (1) the procurement or operation of an unmanned aircraft system (UAS) by agents or agencies of the State or a political subdivision, and (2) the disclosure of personal information about any person acquired through the operation of an UAS by these agents or agencies. The agents or agencies who receive CIO approval may procure or operate an UAS before implementation of the knowledge test required by G.S. 63-95. In addition to receiving CIO approval, agents or agencies who submit a request on or after the date of implementation of the knowledge test required by G.S. 63-95 are also subject to the provisions of the statute. Amended G.S. 63-95(b) provides that the Division of Aviation (hereafter, Division) must develop a knowledge test for operating an UAS (current law requires a knowledge and skills test). The test must ensure that the UAS operator is knowledgeable about State statutes and regulations concerning UAS operation.

    Amended G.S. 63-96: (1) changes from "license" to "permit" what is required to commercially operate an UAS; (2) reduces the minimum age for a permit from 18 years old to 17 years old; (3) requires the Division to administer a program that complies with all applicable federal regulations; and (4) provides that the Division rules for designating a geographic area for operating an UAS must not be more restrictive that those of the Federal Aviation Administration (FAA). Before implementing the knowledge test required by G.S. 63-96, any person authorized by the FAA to commercially operate an UAS is not in violation of the statute if the person applies for a permit for commercial operation within 60 days of the full implementation of the permitting process and is issued a state commercial permit "in due course."

71. **S.L. 2015-241 (H 97): 2015 Appropriations Act, amended by S.L. 2015-264 (S 119).** This session law makes base budget appropriations for current operations and other changes. Unless otherwise noted, the provisions are effective July 1, 2015. The section numbers and pages of the session law are noted to facilitate locating the provisions.

    New Department of Information Technology. New Article 14 of General Statutes Chapter 143B creates the Department of Information Technology, headed by the State Chief Information Officer (CIO), who is appointed by the Governor. Unless specifically provided by law, the provisions concerning this department do not apply to the Judicial Department, although it may elect to participate in this new department's programs, services, etc. Included in this new department are the Criminal Justice Information Network and the North Carolina 911 Board. New G.S. 143B-1325 provides that in Part II of Article 14 the unauthorized use of public purchase or contract procedures for private benefit is a Class 1 misdemeanor. New G.S. 143B-1326 provides that the financial interest of specified department executives or managers in certain contracts or any department employee

who receives a financial benefit in return for an awarded contract is guilty of a Class F felony. Sections 7A.1-7A.6 (pages 28-67).

School safety exercises and other safety issues. Amended G.S. 115C-105.49 provides that at least once annually (current law, at least every two years) each local school unit must require each school to hold (current law, is encouraged to hold) a school-wide tabletop exercise and drill based on the procedures documented in its School Risk Management Plan. The drill must include a practice school lockdown due to an intruder on school grounds. Schools are strongly encouraged to include law enforcement agencies and emergency management agencies in their tabletop exercises and drills. The Department of Public Safety (DPS) and the Center for Safer Schools (CSS) must provide guidance and recommendations to local school units on the multiple hazards to plan and respond to, including intruders. Amended G.S. 115C-105.51 requires DPS and CSS, in collaboration with the Department of Public Instruction (DPI), to implement and maintain an anonymous safety tip line to receive anonymous student information on internal or external risks to the school population, school buildings, and school-related activities. DPS and CSS, in collaboration with DPI and the NC 911 Board, must implement and maintain a statewide panic alarm system to launch real-time 911 messaging to public safety answering points of internal and external risks to the school population, school buildings, and school-related activities. Theses statutory changes apply beginning with the 2015-2016 school year. Section 8.26 (pages 76-81).

Medical examiner fees increased. Amended G.S. 130A-389 provides that if the death or fatal injury occurred outside the county in which the deceased resided, the State must pay the entire medical examiner autopsy fee of $2,800. If within the county of residence, the county must pay $1,750 and the State pays $1,050. Current law provides for a $1,250 fee to be paid by the State, except if the deceased is a resident of the county where the death or fatal injury occurred, the county must pay the fee. For filing an autopsy report, the fee is increased from $100 to $200, with the State paying the fee unless the deceased is a resident of the county in which the death or fatal injury occurred, then the county pays the fee. These provision are effective for fees imposed for autopsies performed on or after October 1, 2015, and reports filed on or after that date. Sections 12E.5 and 12E.6 (pages 161-62).

Sensitive public security information not public record. Amended G.S. 132-1.7 provides that the following are not public records: specific security information or detailed plans, patterns, or practices (1) associated with prison operations, and (2) to prevent or respond to criminal, gang, or organized illegal activity. Section 16A.5 (page 301).

Organizational changes within Department of Public Safety. Amended G.S. 143B-915 provides that the State Bureau of Investigation (SBVI) is administratively located in the Department of Public Safety (DPS) (current law states within the Division of Law Enforcement of DPS). New G.S. 143B-929 provides that the SBI shall operate and manage the Information Sharing and Analysis Center, which shall be under the sole direction and control of the SBI Director. Amended G.S. 143B-911 provides that the State Capitol Police is located within the State Highway Patrol (current law states within the Division of Law Enforcement of DPS). Section 16A.7 (pages 301-302).

Grants for body-worn video cameras for law enforcement. The sum of $2,500,000 is appropriated in both the 2015-2016 and 2016-2017 fiscal years to the Department of Public Safety to provide matching grants to local and county law enforcement agencies to purchase body-worn video cameras, subject to the following requirements: (1) the maximum grant amount is $100,000; (2) agencies must provide two dollars of local funds for every dollar of grant funds received; and (3) agencies must have appropriate policies and procedures governing the operation of the cameras and storage of camera images. Section 16A.8 (page 303).

Report on gang prevention recommendations. New G.S. 20-196.5 requires the State Highway Patrol, in conjunction with the State Bureau of Investigation and Governor's Crime Commission, to

develop recommendations concerning the establishment of priorities and needed improvements concerning gang prevention and report the recommendations to specified legislative committees on or before March 1 of each year. This session law repeals a similar provision in G.S. 143B-1101(b) that places the responsibility solely on the Governor's Crime Commission. Section 16B.3 (page 304).

Reimburse counties for convicted inmates, parolees, and post-release supervisees, awaiting transfer to state prison system. The Department of Public Safety may use funds available to the department for the 2015-2017 biennium to pay $40.00 per day as reimbursement to counties for the cost of housing convicted inmates, parolees, and post-release supervisees awaiting transfer to the state prison system under G.S. 148-29. Section 16C.1 (page 307).

Annual report on safekeepers; collection of delinquent reimbursements. New G.S. 143B-707.4 requires the Department of Public Safety (DPS) by October 1 of each year to report on various subjects to specified legislative committee chairs on county prisoners housed in the state prison system under safekeeping orders issued pursuant to G.S. 162-39. Among the subjects are: (1) the amount paid by counties for housing and extraordinary medical care of safekeepers, and (2) a list of counties in arrears for safekeeper payments owed to DPS at the end of the fiscal year. Amended G.S. 148-10.4 provides on notification from the Division of Adult Correction that an amount owed by a county for safekeeper reimbursements is more than 120 days overdue, the N.C. Sheriffs' Association must withhold funds from any reimbursements due to a county and transmit those funds to the Division until that overdue safekeeper reimbursement is satisfied. Sections 16C-11 and 16C-12 (page 310).

Parole eligibility report. New G.S. 143B-721.1 requires that each fiscal year the Post-Release Supervision and Parole Commission, with the assistance of the Sentencing and Policy Advisory Commission and the Department of Public Safety, analyze the amount of time each inmate who is eligible for parole on or before July 1 of the prior fiscal year has served compared to the time served by the offenders under the Structured Sentencing Act (SSA) for comparable crimes. The Commission must determine if the person has served more time in custody than the person would have served if sentenced to the "maximum sentence" (calculation set out in the statute) under the SSA. The Commission must reinitiate the parole review process for each offender who has served more time than the person would have served under the SSA, as provided in this statute. Section 16C.14 (pages 311-12).

Collecting DNA sample after felony arrest for additional felonies. Effective for arrests occurring on or after December 1, 2015, amended G.S. 15A-266.3A(f) includes many additional felonies for which a DNA sample must be collected for analysis after arrest. Some of the common additional felonies include: assault by strangulation (G.S. 14-32.4); habitual misdemeanor assault (G.S. 14-33.2); discharging barreled weapon or firearm into occupied property (G.S. 14-34.1); common law robbery punished under G.S. 14-87.1; malicious conduct by prisoner (G.S. 14-258.4); child abuse inflicting serious injury (G.S. 14-318.4(a)); child abuse inflicting serious bodily injury (G.S. 14-318.4(a3)); cruelty to animals by malicious killing (14-360(a1)); and cruelty to animals by malicious torture(G.S. 14-360(b)). Section 17.3 (pages 314-15).

The Joint Legislative Oversight Committee on Justice and Public Safety must study extending the collection of DNA samples to people arrested for any felony and report its findings and recommendations to the 2016 legislative session.

Annual report on criminal court cost waivers. New G.S. 7A-350 requires the Administrative Office of the Courts to maintain records of all cases in which a judge makes a finding of just cause to grant a waiver of criminal court costs under G.S. 7A-304(a) and report the waivers to specified legislative committees by February 1 of each year. The report must aggregate the waivers by the district in which the waivers were granted and by the name of each judge granting the waivers. Section 18A.3 (page 316).

Conference of District Attorneys may use grant funds for toxicology analyses other than from hospitals. A 2013 session law (S.L. 2013-360) required that of the funds appropriated to the Judicial Department, a specified sum be allocated to the Conference of District Attorneys so district attorneys could obtain toxicology analyses from local hospital hospitals concerning DWI suspects whose conduct did not result in serious injury or death. This session law amends the 2013 session law to allow district attorneys to obtain toxicology analyses from providers other than hospitals. Section 18B.4 (page 316).

Conference of District Attorneys must report dismissals based on delay in lab analyses. When a criminal case is dismissed as a direct result of a delay in the analysis of evidence by the State Crime Laboratory, the district attorney for that district must report the dismissal to the Conference of District Attorneys. The Conference must compile these reports and submit them quarterly beginning October 30, 2015, to specified legislative committee chairs. Section 18A.9 (page 317).

Criminal court costs changed. Amended G.S. 7A-304(a) changes the allocation of criminal court costs as follows: (1) deletes G.S. 7A-304(a)(2b), which provides $18.00 to the Statewide Misdemeanor Confinement Fund; (2) increases the amount in G.S. 7A-304(a)(4) from $129.50 to $147.50 for support of the General Court of Justice; and (3) changes the distribution of $50.00 in G.S. 7A-304(a)(4b) from the Statewide Misdemeanor Confinement Fund to the State Treasurer for additional support to the General Court of Justice. Section 18A.11 (pages 317-18).

Note: A separate budgetary provision appropriates $22.5 million each year to support the Statewide Misdemeanor Confinement Fund.

Innocence Inquiry Commission audit and transfer. Amended G.S. 15A-1462 requires the Administrative Office of the Courts (AOC) to conduct an annual audit of the Innocence Inquiry Commission and transfers the commission to the AOC for administrative purposes. Section 18A-16 (page 318).

Office of Indigent Defense Services audit, transfer, and budget. Amended G.S. 7A-498.2 requires the Administrative Office of the Courts (AOC) to conduct an annual audit of the budget of the Office of Indigent Defense Services, transfers the office to the AOC, provides that the office's budget will be part of the AOC's budget, and allows the AOC Director to modify the office's budget and to use funds appropriated to the office without the approval of the office or the Commission on Indigent Defense Services. Section 18A-17 (page 318).

Legislative study of Office of Indigent Defense Services and Innocence Inquiry Commission. The Joint Legislative Oversight Committee on Justice and Public Safety must study: (1) the Office of Indigent Defense Services and determine whether changes should be made in the ways in which appropriated funds are used to provide legal assistance and representation to indigents; and (2) the Innocence Inquiry Commission and determine whether changes should be made in the way in which the Commission investigates and determines credible claims of factual innocence made by criminal defendants. The Committee must report its findings and recommendations, including any proposed legislation, to the 2016 legislative session. Section 18A.18 (page 319).

Three special superior court judgeships abolished; designation of judge as business court judge. Amended G.S. 7A-45.1 abolishes three special superior court judgeships at each current judge's retirement, resignation, end of term, etc., and the Chief Justice is requested to designate a special judgeship created by subsection (a9) as a business court judge. The Chief Justice is also requested, under the justice's authority under G.S. 7A-45.3 to designate business court judges, to maintain at least five business court judgeships from among the authorized special superior court judgeships. Section 18A.19 (pages 319-20).

E-courts information technology initiative. The Administrative Office of the Courts must establish a strategic plan for the design and implementation of its e-Courts information technology initiative by February 1, 2016. This initiative, when fully implemented, will provide for the

automation of all court processes, including electronic filing, retrieval, and processing of documents. There are several other provisions concerning this initiative in this section. Section 18A.21 (pages 320-21).

Study efficiency of establishing automated kiosks in local confinement facilities for defense attorneys representing indigent defendants. The Administrative Office of the Courts, in conjunction with the Office of Indigent Defense Services and the N.C. Sheriffs' Association, must study and determine whether savings can be realized by the establishment of fully automated kiosks in local confinement facilities to allow defense attorneys representing indigent defendants to consult remotely with their clients. The AOC must report its findings and recommendations, including at least two potential pilot sites, to specified legislative committee chairs by February 1, 2016. Section 18B.4 (page 323).

Study fee schedules used by Office of Indigent Defense Services. The Joint Legislative Oversight Committee on Justice and Public Safety must study the creation and implementation of fee schedules to be used by the Office of Indigent Defense Services to compensate private assigned counsel representing indigent defendants. The committee must include its findings and recommendations in its report when the General Assembly reconvenes in 2016. Section 18B.5 (page 323).

DWI towing, storing, and selling changes. Amended G.S. 20-28.3(d) (custody of motor vehicle when seized under DWI forfeiture law) substitutes the State Surplus Property Agency (Agency) of the Department of Administration in place of the Department of Public Instruction concerning constructive possession of a seized vehicle when it is delivered to a location designated by the Agency. Amended G.S. 20-28.5 adds provisions for the sale of a forfeited motor vehicle when it is in the possession or constructive possession of the Agency. Section 27.3 (pages 344-47).

New ground for Division of Motor Vehicles to refuse registration or certificate of title. This session law makes various changes to G.S. 20-311 concerning the Division of Motor Vehicles (DMV) actions when it receives notice of a lapse in financial responsibility. In addition, amended G.S. 20-54, effective for lapses occurring on or after January 1, 2016, requires the DMV to refuse registration or issuance of a certificate of title when the owner of the vehicle has failed to pay any penalty or fee imposed by G.S. 20-311. Section 29.31 (pages 375-77).

Modification of S.L. 2015-31 concerning stop lamps in older motor vehicles. Earlier in this session, S.L. 2015-31 amended G.S. 20-129(g) and G.S. 20-129.1, effective for offenses committed on or after October 1, 2015, to make clear that motor vehicles must be equipped with stop lamps, commonly known as brake lights, one on each side of the rear of the vehicle (however, a motorcycle only needs one stop lamp). This session law makes clear that, effective for offenses committed on or after October 1, 2015, a motor vehicle manufactured after December 31, 1955, and on or before December 31, 1970, must be equipped with a stop lamp in the rear of the vehicle.

72. S.L. 2015-247 (H 173): Miscellaneous changes-2. This session law makes various criminal law changes, effective September 23, 2015, unless otherwise noted in a summary below.

Extend time to avoid court costs for failure to pay fine, penalty, or costs. Amended G.S. 7A-304(a)(6) requires the payment of $50 in court costs when a defendant fails to pay a fine, penalty, or costs within 40 days of the date specified in the court's judgment. Current law sets 20 as the number of days.

Amended G.S. 20-24.2(a)(2) requires the court to report to the Division of Motor Vehicles the name of a defendant charged with a Chapter 20 offense who fails to pay a fine, penalty, or costs within 40 days of the date specified in the court's judgment. Current law sets 20 as the number of days.

These changes are effective December 1, 2015, except that a failure to pay after 20 days occurring before the effective date of the session law (September 23, 2015) is not abated or affected by this session law and the statutes that would be applicable but for this session law remain applicable to that failure to pay.

Administrative Office of Courts to report certain remand orders from superior court. The Administrative Office of the Courts, in consultation with the Conference of Clerks of Superior Court, must make any necessary information system modifications and maintain records of all cases in which a defendant withdraws an appeal for trial de novo in superior court and the judge has remanded the case to district court and must report these remanded to specified legislative chairs by February 1 of each year. The report must (1) include the total number of remanded cases and also the total number of these remanded cases in which the court remitted costs; and (2) aggregate these totals by district and by the name of each judge ordering a remand.

Designated magistrate may accept waiver of counsel and need not be licensed attorney; magistrates not prohibited from accepting guilty plea to offense of intoxicated and disruptive in public. Amended G.S. 7A-146(11) allows a chief district court judge to designate certain magistrates to appoint counsel and accept waivers of counsel (current law does not allow acceptance of waiver of counsel) and removes the requirement that the designation was limited to magistrates who are licensed attorneys. Amended G.S. 14-444 (intoxicated and disruptive in public) removes the prohibition against a magistrate's accepting a guilty plea and entering judgment for this offense.

Probation supervision continues when defendant appeals activation of probationary sentence. Amended G.S. 15A-1347 provides that if a defendant appeals an activation of a sentence as a result of a finding of a probation violation by the district or superior court, probation supervision continues under the same conditions until the termination date of the supervision period or disposition of the appeal, whichever occurs first. For a discussion of this provision, see Jamie Markham, *Revoked, But Still on Probation?*," North Carolina Criminal Law Blog (UNC School of Government, October 1, 2015), http://nccriminallaw.sog.unc.edu/revoked-but-still-on-probation/.

Changes involving prohibition of death penalty when defendant has intellectual disability. Amended G.S. 15A-2005 prohibits a death sentence for a defendant who has an "intellectual disability" (this session law replaces the term "mentally retarded" with "intellectual disability"). Amended G.S. 15A-2005(a)(2) provides that an intelligence quotient of 70 is approximate, and a higher score resulting from the application of the standard error of measurement to an intelligence quotient of 70 shall not preclude a defendant from being able to present additional evidence of intellectual disability, including testimony concerning adaptive deficits. Also, the subdivision provides that accepted clinical standards for diagnosing significant limitations in intellectual functioning and adaptive behavior must be applied in the determination of intellectual disability. These legislative changes were made in response to United States Supreme Court rulings in *Hall v. Florida*, 134 S. Ct. 1986 (2014), and *Brumfield v. Cain*, 135 S. Ct. 2269 (2015).

Notification of expunction and other information by electronic or facsimile transmission. Amended G.S. 15A-150 provides that the Director of the Administrative Office of the Courts may enter into an agreement with any of the State agencies listed in subsection (b) (Division of Motor Vehicles, Division of Adult Correction, Department of Public Safety, etc.) for electronic or facsimile transmission of any information that must be provided under the statute (expunction and conditional discharges under various statutes).

Doubling of bond is permissive rather than mandatory. Amended G.S. 15A-534(d3), effective for conditions of pretrial release imposed on or after October 1, 2015, provides that when conditions of pretrial release are being determined for a defendant who is charged with an offense and the defendant is currently on pretrial release for a prior offense, the judicial official may require (current law states "shall require") the execution of a secured bond in an amount at least double the amount

of the most recent prior secured or unsecured bond for the charges or, if no bond has yet been required for the charges, at least $1,000.

Preservation of biological evidence. G.S. 15A-268 provides that a custodial agency must preserve physical evidence that is reasonably likely to contain biological evidence collected in the course of a criminal investigation or prosecution. Amended G.S. 15A-268(a5) provides that a duty to preserve may not be waived knowingly and voluntarily by a defendant without a court hearing, "which may include any other hearing associated with the disposition of the case" (quoted words added by this session law). Amended G.S. 15A-268(a6) provides that despite the retention requirements for biological evidence set out in the subsection, at any time after collection of evidence and before or at the time of disposition of the case at the trial court level, if the evidence collected as part of the criminal investigation is of a size, bulk, or physical character to render retention impracticable or should be returned to its rightful owner, the State may petition the court for retention of samples of the biological evidence instead of the actual physical evidence. The subsection sets out the court procedures. These changes are effective October 1, 2015.

Rule 803(6) is amended to allow certification by the custodian of a business record to show authenticity of a record in lieu of testimony. Amended Rule 803(6) (hearsay exception for records of regularly conducted activity), effective October 1, 2015, allows the custodian of a business record by affidavit or document under seal made by the custodian or witness, to show the authenticity of the record in lieu of testimony. Authentication of evidence by affidavit must be confined to records of nonparties, and the proponent of that evidence must give advance notice to all other parties of the intent to offer the evidence with authentication by affidavit.

73. S.L. 2015-250 (H 792): New offense of disclosure of private images; extension of indecent exposure law to person willfully exposing private parts in private premises. This session law is effective for offenses or acts committed on or after December 1, 2015.

Disclosure of private images offense. New G.S. 14-190.5A creates the offense of disclosure of private images. A person commits this offense if all of the following exist:

(1) the person knowingly discloses an "image" (defined as photo, film, video, recording, digital, or other reproduction) of another person with the intent to coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person, or cause others to do so;

(2) the depicted person is identifiable from the disclosed image itself or information offered in connection with the image;

(3) the depicted person's "intimate parts" (defined as genitals, pubic area, anus, or nipple of female over age of 12) are exposed or the depicted person is engaged in "sexual conduct" (defined as vaginal, anal, or oral intercourse; masturbation, excretory functions, or lewd exhibition of uncovered genitals; an act or condition that depicts torture, physical restraint by being fettered or bound, etc.) in the disclosed image;

(4) the person discloses the image without the affirmative consent of the depicted person; and

(5) the person discloses the image under circumstances such that the person knew or should have known that the depicted person has a "reasonable expectation of privacy" (defined as when a depicted person has consented to the disclosure of an image within the context of a personal relationship as defined in G.S. 50B-1(b) and the depicted person reasonably believes the disclosure will not go beyond that relationship).

The punishment for this offense is as follows: (1) Class H felony if person is 18 years old or older at the time of the offense; (2) Class 1 misdemeanor for a first offense by a person under 18 at the time of the offense; and (3) Class H felony for a second or subsequent offense by a person under 18 at the time of the offense. The offense is not applicable to (1) images involving voluntary exposure in public or commercial settings; (2) disclosures made in the public interest, including reporting of

unlawful conduct or the lawful and common practices of law enforcement, criminal reporting, medical treatment, scientific or educational activities, etc.; and (3) providers of an interactive computer service for images provided by another person. A civil action is authorized for a violation of the statute with specified damages, and the action must be brought within one year after the initial discovery of the disclosure, but in any event must be brought no more than seven years from the most recent disclosure of the private image.

The Joint Legislative Oversight Committee on Justice and Public Safety must study the issue of improper disclosure of images of people superimposed onto other images exposing intimate parts or depicting sexual conduct. The study must include whether any existing crimes or civil actions currently apply and whether this new offense should be amended to include superimposed images. The committee must report its findings and any recommendations by April 1, 2016.

New indecent exposure offenses. Amended G.S. 14-190.9 creates three new offenses. Unless the conduct is prohibited by another law providing greater punishment (1) a person who willfully exposes his or her private parts in the presence of anyone other than a consenting adult on the private premises of another or so near thereto to be seen from the private premises for the purpose of arousing or gratifying sexual desire is guilty of a Class 2 misdemeanor; (2) a person located in a private place who willfully exposes his or her private parts with the knowing intent to be seen by a person in a public place is guilty of a Class 2 misdemeanor; and (3) a person at least 18 years old who willfully exposes his or her private parts in a private residence of which the person is not a resident and in the presence of any other person less than 16 years old who is a resident of that private residence is guilty of a Class 2 misdemeanor.

74. **S.L. 2015-261 (H 730): Create next generation 911 reserve fund and other changes.** Effective January 1, 2016, various statutes in Chapter 62A of the General Statutes are amended to create a next generation reserve fund to implement next generation 911, require public safety answering points (PSAPS) to implement next generation 911, authorize the 911 Board to establish purchasing agreements for statewide procurement, allow the PSAP grant account to be used for expenses to enhance 911 service, and amend the limitation of liability for the 911 system. The next generation 911 system is defined as an IP-enabled emergency communications system using Internet Protocol or any other available technology to enable the user of a communications service to reach an appropriate PSAP by sending the digits 911 via dialing, text, or short message service (SMS) or any technological means.

75. **S.L. 2015-263 (S 513): Wildlife and marine fisheries officers' search and seizure authority modified; other criminal law changes.** Amended G.S. 113-136(k), effective for offenses committed on or after December 1, 2015, provides that it is unlawful to refuse to allow wildlife law enforcement officers, marine fisheries inspectors, and other law enforcement officers to inspect weapons and equipment (this session law deletes fish and wildlife) if the officer reasonably believes them to be possessed incident to an activity which the officers and inspectors have enforcement jurisdiction, and the officer has reasonable suspicion that a violation has been committed (this session law adds the reasonable suspicion requirement)—except an officer may inspect a shotgun to confirm whether it is plugged or unplugged without reasonable suspicion that a violation has been committed. It is unlawful to refuse to allow wildlife law enforcement officers, marine fisheries inspectors, and other law enforcement officers to inspect fish or wildlife to ensure compliance with bag and size limits. Except as authorized by G.S. 113-137 (search on arrest; seizure and confiscation of property; disposition of confiscated property), nothing in G.S. 113-136 authorizes the officers and inspectors described above to inspect, in the absence of a person in apparent control of the item to be inspected: (1) weapons; (2) equipment, except for equipment left unattended in the normal

operation of the equipment, including traps, trot lines, crab pots, and fox pens; (3) fish; and (4) wildlife. The Wildlife Resources Commission must report to the Joint Legislative Oversight Committee on Justice and Public Safety by March 1, 2016, and annually thereafter, on the number of complaints received against Commission law enforcement officers, the subject matter of the complaints, and the geographic areas in which the complaints were filed.

Amended G.S. 20-171.22, effective for offenses committed on or after September 30, 2015, provides that a person may operate an all-terrain vehicle or utility vehicle on a public street or highway while engaged in farming operations.

Amended G.S. 14-140.1 (certain fires to be guarded by watchman), effective for offenses committed on or after September 30, 2015, changes the punishment for a violation of this statute from a Class 3 misdemeanor with a minimum $10 fine to an infraction with a maximum penalty of $50.

76. S.L. 2015-264 (S 119): Miscellaneous changes-3. The various criminal law changes in this summary are effective October 1, 2015.

Amended G.S. 14-269 (carrying concealed weapon) changes the spelling of the weapon, "shurikin," to "shuriken."

Amended G.S. 15A-150(b) (notification of expunctions) removes the Division of Adult Correction of the Department of Public Safety from the list of agencies to whom notice of expunctions are sent (but note that the Department of Public Safety remains on the list).

Amendments to G.S. 20-28(a2) (driving without reclaiming license) and G.S. 20-179(c) (DWI grossly aggravating factors) are discussed in the summary of S.L. 2015-186 (H 529), enacted earlier in this session. For a discussion of these amendments, see Shea Denning, *Technical Corrections Act Clarifies New DWLR Law*, North Carolina Criminal Law Blog (UNC School of Government, October 6, 2015), http://nccriminallaw.sog.unc.edu/technical-corrections-act-clarifies-new-dwlr-law/.

Amended G.S. 20-28.9(a), as previously amended by section 27.3(d) of S.L. 2015-241, deletes the provision that allowed the State Surplus Agency to enter into contracts for some regions of the state while performing the work of towing, storing, processing, maintaining, and selling motor vehicles seized pursuant to G.S. 20-28.3 itself in other regions of the state.

77. S.L. 2015-265 (H 297): Prohibit sale of unborn child's remains resulting from abortion or miscarriage. New G.S. 14-46.1, applicable to offenses committed on or after October 1, 2015, provides that it is a Class I felony when a person sells the remains of an unborn child resulting from an abortion or a miscarriage or any aborted or miscarried material. The offense does not apply to a payment for incineration, burial, cremation, etc.

78. S.L. 2015-267 (H 735): Changes to S.L. 2015-195 and S.L. 2015-241 concerning fingerprinting and State Capitol Police. Effective October 1, 2015, S.L. 2015-195 is amended to delete in G.S. 15A-502(a2) and (a4) that fingerprinting is for the purpose of "reporting . . . offenses to the National Criminal Instant Background Check System (NCIS)." S.L. 2015-241 is amended, effective July 1, 2015, to provide that the chief, special officers, and employees of the State Capitol Police Section of the State Highway Patrol (SHP) are not considered SHP members.

79. S.L. 2015-268 (H 259): State Capitol Police relocation is clarified. A new section is added to the Appropriations Act, S.L. 2015-241, effective July 1, 2015, to clarify that the relocation of the State Capitol Police within the State Highway Patrol does not affect the subject matter or territorial jurisdiction of its officers.

80. **S.L. 2015-270 (S 370): Application for certificate of title, registration plate, registration card, etc., may be submitted with electronic signature to Division of Motor Vehicles.** Amended G.S. 20-52, effective August 1, 2016 (note the year in this date), provides that unless otherwise prohibited by federal law, an application for a certificate of title, registration plate, registration card, and any other document required by the Division of Motor Vehicles (DMV) to be submitted with the application and requiring a signature may be submitted to the DMV with an electronic signature in accordance with Article 40 of Chapter 66 of the General Statutes. Amended G.S. 20-58.4 (release of security interest), effective December 1, 2015, requires that electronic notice of the release of the security interest to the DMV must be sent through the electronic lien release system established under G.S. 20-58.4A.

81. **S.L. 2015-276 (H 924): Miscellaneous changes-4.** Amended G.S. 20-139.1(b5), effective for offenses committed on or after December 1, 2015, makes clear that an officer who requests a person to provide a blood sample, in addition to or in lieu of a breath test, for a violation of G.S. 20-141.4 (felony and misdemeanor death by vehicle), must do so "at any relevant time after the driving" (quoted language added).

    Amended G.S. 20-130.1 (using red or blue lights on vehicles prohibited), effective for offenses committed on or after December 1, 2015, removes the requirement that a red or blue light be "forward facing" (quoted language is deleted from the statute).

    Amended G.S. 15A-298 (SBI administrative subpoena authority), effective for offenses committed on or after October 20, 2015, removes the requirement that the State Bureau of Investigation must issue rules in order to issue administrative subpoenas to a communications common carrier or electronic communications service.

82. **S.L. 2015-282 (S 238): Cyberstalking includes installing electronic tracking device without consent to track person's location.** Amended G.S. 14-196.3 (cyberstalking, a Class 2 misdemeanor), effective for offenses committed on or after December 1, 2015, prohibits the knowing installation of an electronic tracking device without consent to track a person's location. There are eleven exceptions, including a law enforcement officer's performance of official duties.

83. **S.L. 2015-284 (H 712): Needle and hypodermic syringe disposal pilot program; drug paraphernalia law change.** The State Bureau of Investigation (SBI) no later than December 1, 2015, and in consultation with the North Carolina Harm Reduction Coalition, must establish and implement a used needle and hypodermic syringe disposal pilot program. The pilot program must offer the free disposal of used needles and hypodermic syringes to reduce the spread of HIV, AIDS, viral hepatitis, and other blood borne diseases through needle stick injuries resulting from physical contact with improperly discarded used needles and syringes. The SBI must select two counties in which to operate the pilot program but may select up to four counties. No later than one year after implementing the pilot program, the SBI must report its results to specified legislative chairs as set out in the session law.

    Amended G.S. 90-113.22 (possession of drug paraphernalia), effective December 1, 2015, bars a charge or prosecution when there are residual amounts of a controlled substance contained in a needle or sharp object if there is a hypodermic needle or other sharp object on the person or the person's premises or vehicle if, pursuant to a law enforcement officer's request, the person alerts the officer of that fact before a search.

84. **S.L. 2015-286 (H 765): Miscellaneous changes-5.** The various criminal law changes in this summary are effective October 22, 2015, unless otherwise noted.

G.S. 14-197 (using profane or indecent language on public highways) and G.S. 14-401.8 (refusing to relinquish party telephone line in emergency) are repealed.

Amended G.S. 14-56 (breaking or entering motor vehicle, boats, etc.), effective for offenses committed on or after December 1, 2015, provides that it is not a violation of this statute when a person breaks or enters a motor vehicle, boat, etc., to provide assistance to a person inside under certain circumstances such as a person needing first aid or emergency health care treatment, and new G.S. 1-539.27, effective for causes of action arising on or after December 1, 2015, provides immunity from civil liability for damages to the motor vehicle, boat, etc., while doing so—absent gross negligence, intentional wrongdoing, etc.

Amended 20-171.15 (age restrictions for operating all-terrain vehicle) deletes subsection (b) (concerning person under 12 years old) and revises subsection (c) to provide that it is unlawful when a parent or legal guardian of a person under 16 years old knowingly permits that person to operate an all-terrain vehicle in violation of the age restriction warning label affixed by the manufacturer as required by the applicable American National Standards Institute/Specialty Vehicle Institute of America design standard (the current statute simply provides that the vehicle has an engine capacity greater than 90 cubic centimeter displacement). A similar change is made to G.S. 20-171.17 (prohibited acts by sellers).

G.S. 14-360 prohibits cruelty to animals. Subdivision (c)(1) provides that the statute does not apply to the lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission (Commission), except the statute does apply to those birds exempted by the Commission from its definition of "wild birds." This session law adds "other than pigeons" after "birds." A similar change is made to G.S. 19A-1.1 (exemptions to civil remedy for protection of animals).

New G.S. 114-8.7 requires the Attorney General to establish a hotline to receive reports of allegations of animal cruelty or violations of the Animal Welfare Act (Article 3 of Chapter 19A of the General Statutes) against animals under private ownership, by means including telephone, electronic mail, and an Internet website. When allegations involving animal cruelty are received, they must be referred to the appropriate local animal control authority where the violations are alleged to have occurred. Allegations involving the Animal Welfare Act must be referred to the Department of Agriculture and Consumer Services. The changes set out in this paragraph are effective March 1, 2016.

85. S.L. 2015-287: H 850: Eastern Band of Cherokee Indians law enforcement functions. New Article 2 of Chapter 1E of the General Statutes authorizes the Eastern Band of Cherokee Indians to establish a police department, a tribal alcohol law enforcement division, a natural resources law enforcement agency, and a probation and parole agency. Amended G.S. 1E-1 provides that a limited driving privilege signed and issued by a judge or justice of the Cherokee Trial Courts under the applicable provisions of Chapter 20 of the General Statutes and filed in its clerk's office shall be valid and given full faith and credit as specified in G.S. 1E-1(a) (North Carolina state courts must give full faith and credit to a judgment, decree, or order signed and filed in the Cherokee Tribal Courts as specified in the subsection). This session law is effective October 23, 2015.

86. S.L. 2015-289 (H 215): Procedures for criminal defendant to waive right to jury trial. Amended G.S. 15A-1201, effective for criminal defendants waiving their right to a jury trial on or after October 1, 2015, makes the following changes.

When a defendant waives the right to a jury trial, the waiver includes the determination of DWI sentencing factors under G.S. 20-179 and aggravating factors under the Structured Sentencing Act as provided in G.S. 15A-1340.16(a1) and (a3).

A defendant must give notice of intent to waive a jury trial by one of three ways: (1) a stipulation, which may be conditioned on each party's consent to the trial judge, signed by both the State and the defendant and served on counsel for any co-defendants; (2) filing a written notice of intent to waive a jury trial and serving it on the State and counsel for any co-defendants within the earliest of (i) ten working days after arraignment, (ii) ten working days after service of a calendar setting, or (iii) ten working days after the setting of a definite trial date; or (3) giving notice of intent to waive a jury trial on the record in open court by the earlier of (i) the time of arraignment, or (ii) the calling of the calendar. If a motion for joinder of co-defendants is allowed, there must be a jury trial unless all defendants waive the right to a jury trial or the court in its discretion severs the case.

When a defendant gives notice of waiver of a jury trial, the State must schedule the matter to be heard to determine in open court whether the judge agrees to hear the case without a jury. The determination must be made by the judge who will preside over the trial. The judge must do the all of the following: (1) personally address the defendant and determine whether the defendant fully understands and appreciates the consequences of the defendant's decision to waive a jury trial; (2) determine whether the State objects to the waiver and, if so, why; and (3) consider the arguments presented by the State and defendant concerning the waiver of jury trial.

Once the defendant's waiver of a jury trial has been made and consented to by the trial judge, the defendant may revoke the waiver one time as of right within ten business days of the defendant's initial notice to waive a jury trial if the defendant (i) does so in open court with the State present, or (ii) in writing to both the State and judge. In all other circumstances, the defendant only may revoke the waiver when the trial judge finds the revocation would not cause unreasonable hardship or delay to the State. Once a revocation is granted, the decision is final and binding.

When a defendant who has waived the right to jury trial makes a suppression motion under Article 53 of Chapter 15A, the court must make written findings of fact and conclusions of law.

87. S.L. 2015-292 (H 8): Court of Appeals elections require party designation. Amended G.S. 163-323, applicable to elections held on or after October 29, 2015, requires a candidate for judge of the North Carolina Court of Appeals when filing notice of candidacy to indicate the political party with which that candidate is affiliated or any unaffiliated status. The party designation or unaffiliated status must be included on the ballot.

88. S.L. 2015-290 (H 327): Definition modified involving offense of impersonating firemen or emergency medical services personnel. Amended G.S. 14-276.1 (impersonating firemen or emergency medical services personnel), effective October 29, 2015, modifies the definition of emergency medical services personnel so it includes an emergency medical responder, emergency medical technician, advanced emergency medical technician, paramedic, or other member of a rescue squad or other emergency medical organization.

89. S.L. 2015-294 (H 318), as amended by S.L. 2015-264 (S 119): Consulate, embassy, and other documents not acceptable as identification. New G.S. 15A-306 provides that the following documents are not acceptable in determining a person's actual identity or residency by a justice, judge, clerk, magistrate, law enforcement officer, or other government official: (1) a matricula consular or other similar document, other than a valid passport, issued by a consulate or embassy of another country; and (2) an identity document issued or created by any other person, organization, county, city, or other local authority, except if expressly authorized by the General Assembly—however, a law enforcement officer may use the documents described in (2) above to assist in determining the identity or residency of a person when they are the only documents providing an indication of identity or residency available to the officer then. (Note: The law enforcement officer

provision discussed in the prior sentence was added by S.L. 2015-264 (S 119).) Any local government policy or ordinance that contradicts this statute is repealed. This session law also removes similar documents for use under G.S. 20-7(b4) (proof of residency for driver's license), G.S. 58-2-164(c) (verify insurance applicant's address), and G.S. 108A-55.3 (verify state residency for medical assistance). These provisions are effective for contracts entered into on or after October 1, 2015, except the amendment to G.S. 58-2-164(c) is effective for insurance policies entered into on or after January 1, 2016.

New G.S. 153A-145.5 (county ordinance) and G.S. 160A-499.4 (city ordinance) prohibit a locality (1) from adopting a sanctuary ordinance that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law, and (2) concerning information about citizenship or immigration status, lawful or unlawful, of any person, a locality cannot (i) prohibit law enforcement from gathering such information, (ii) direct law enforcement not to gather such information, or (iii) prohibit communication of such information to federal law enforcement. These new statutes are effective October 29, 2015.

90. **S.L. 2015-299: Marijuana definition does not include lawfully-produced industrial hemp.** Amended G.S. 90-87(16) provides in the definition of "marijuana" that the term does not include industrial hemp when it is produced and used in compliance with rules issued by the Board of Agriculture (Board) on recommendation of the North Carolina Industrial Hemp Commission. This provision becomes effective on the first day of the month following the adoption of permanent rules by the Board and applies to acts involving the production, possession, or use of industrial hemp occurring on or after that date.

Motor Vehicle Law
Shea Riggsbee Denning
School of Government

1. **S.L. 2015-115 (S 43): Lengthens period following military service in which a CDL applicant who is a military veteran may seek waiver of skills test.** This act amends G.S. 20-37.13(c1) to permit a veteran to seek a waiver of the skills test for a commercial driver's license for up to one year (was 90 days) after his or her discharge from the military. New G.S. 20-37.13(c2) permits an applicant to provide his or her Form DD 214 "Certificate of Release or Discharge from Active Duty," and his or her military driver's license to meet statutory certification requirements. These amendments are effective July 24, 2015.

2. **S.L. 2015-135 (S 423): Allows persons other than parent or guardian to sign permit or license application for minor in DSS custody.** Amended 20-11(i) permits persons other than the applicant's parent or guardian to sign an application for a permit or license for a minor in the legal custody of the county department of social services. New G.S. 20-309(a2) permits an owner's policy of liability insurance issued to a foster parent or parents that excludes coverage for a foster child to be certified as proof of financial responsibility if the foster child for whom coverage is excluded is otherwise insured. These amendments are effective October 1, 2015.

3. **S.L. 2015-146 (H 288): Proof of Insurance may be in electronic form.** Section 4 enacts new G.S. 20-309(c1), which provides that the proof of insurance required to demonstrate financial responsibility may be satisfied by producing records of insurance in physical or electronic format. Acceptable electronic formats include the display of electronic images on a mobile device through an application or website of the insurer. This amendment is effective July 13, 2015.

4. **S.L. 2015-232 (S 446), as amended by S.L. 2015-264 (S 119): Provides for issuance of loaner/dealer license plates.** New G.S. 20-79.02, effective July 1, 2016, provides for the issuance of loaner/dealer license plates (LD license plates) for franchised dealer loaner vehicles. LD license plates may be displayed only on vehicles that are inventory of a franchised motor vehicle dealer, are covered by liability insurance, are driven by a customer of the dealer who is having a vehicle serviced or repaired by the dealer, and meet other statutory requirements. The driver of a motor vehicle who violates a restriction on the use or display of an LD license plate commits an infraction punishable by a penalty of $100. A dealer who violates a restriction on the use or display of an LD license plate commits an infraction punishable by a penalty of $250. Before January 1, 2019 a new motor vehicle dealer may, but is not required to, display an LD license plate on a service loaner vehicle. Beginning January 1, 2019, a new motor vehicle dealer must display an LD license plate on any new motor vehicle placed into service as a loaner if the dealer is being compensated for the use of the vehicle as a service loaner.

   The act amends the definition of "U-drive-it vehicles" in G.S. 20-4.01(48a) to include a vehicle loaned by a franchised motor vehicle dealer to a customer of that dealer who is having a vehicle serviced or repaired by the dealer. It also amends the definition of "new motor vehicle" in G.S. 20-286(10) to provide that the use of a new motor vehicle by a dealer for demonstration or service loaner purposes does not render the new motor vehicle a used motor vehicle. These definitional amendments are effective August 25, 2015.

The act also amends G.S. 20-79(d), effective August 25, 2015 until December 31, 2018, to provide that a dealer's receipt of compensation for use of a vehicle as a demonstrator or service loaner does not prohibit the dealer from using a demonstration permit for the vehicle.

5. **S.L. 2015-237 (S 541): Regulation of transportation network companies.** New Article 10A of Chapter 20 regulates the operation of a transportation network company (TNC), defined as "any person that uses an online-enabled application or platform to connect passengers with transportation network company drivers who provide prearranged transportation services." The act requires that TNCs operating in North Carolina hold a valid permit issued by DMV for an annual $5,000 fee and meet other requirements, including specific financial responsibility requirements. A TNC must have a policy that prohibits discrimination based on customers' geographic departure point or destination or customers' race, color, national origin, religious belief or affiliation, sex, disability, or age. A TNC's online application must disclose its method for calculating fees before a passenger requests a ride, must allow passengers to receive an estimated fee before requesting a ride, and must send an electronic receipt to the customer. All fees must be paid electronically through the TNC's online application. No cash may be exchanged for a TNC service. TNCs must perform background checks on drivers, and may not permit an individual to serve as a TNC driver if the person (1) has three or more moving violations or one major violation in the past three-years, (2) has been convicted in the past seven years of driving while impaired, fraud, sexual offenses, use of a motor vehicle to commit a felony, or a crime involving property damage, theft, acts of violence, or acts of terror, (3) is a registered sex offender, (4) does not have a valid driver's license, (5) does not have proof of registration of the vehicle to be driven, (6) does not have proof of financial responsibility for the vehicle to be driven, or (7) is not at least 19 years old.

   New G.S. 20-280.9 permits airport operators to charge TNCs and TNC drivers a reasonable fee for their use of the airport's facility and to require an identifying decal to be displayed by TNC drivers. Airport operators also may require the purchase and use of equipment for monitoring or auditing compliance and may designate a location on the facility where TNC drivers may stage and drop off and pick up passengers.

   New G.S. 20-280.10 prohibits counties, cities, airport operators, and governmental agencies from imposing fees, requiring licenses, limiting the operation of TNC services, or otherwise regulating TNC services except as provided in new Title 10A. Effective October 1, 2015.

6. **S.L. 2015-241 (H 97): 2015 Appropriations Act. Increase in DMV fees.** Section 29.30 of this act increases various DMV fees, including the fee for a driver's license, a restored driver's license, a certificate of title, and vehicle registration. The initial increase in driver's license fees is effective October 1, 2015. The remaining increases become effective January 1, 2016, and apply to issuances, renewals, restorations, and requests on or after that date. Effective July 1, 2016, new G.S. 20-88.03 imposes a late fee for vehicle registrations. The late fee is $15 if the registration has been expired for less than one month, $20 if the registration has been expired for more than one but less than two months, and $25 if the registration has been expired for two months or more. The new late registration fee provision expires December 31, 2017. New G.S. 20-4.02, effective July 1, 2020, provides for a quadrennial adjustment of certain DMV fees based on inflation.

   Lapses in financial responsibility. Section 29.31 amends G.S. 20-311, which governs action by DMV when it is notified of a lapse in financial responsibility. Amended G.S. 20-311(a)(4) provides that if an owner fails to respond to a DMV letter regarding a lapse in financial responsibility in the required time

but later establishes there was no lapse, DMV must correct its records and rescind any revocation of the vehicle's registration. Such an owner is not responsible for any fee or penalty based on his failure to timely respond. Amended G.S. 20-311(d) requires the owner of a vehicle whose registration is revoked for a lapse in financial responsibility to pay any penalties assessed within 30 days of the date of the notice. If the owner fails to pay, DMV must withhold the registration renewal of any motor vehicle registered in that owner's name. These provisions are effective January 1, 2016 for lapses in financial responsibility occurring on or after that date. New G.S. 20-311(h), effective July 1, 2015, provides that the penalty and revocation provisions do not apply when the sole owner of a vehicle dies and the owner had financial responsibility for the vehicle at the time of the owner's death.

DMV contracts with license plate agents. Section 29.32 amends G.S. 20-63(h), which governs DMV contracts with license plate agencies. The amendments require that such contracts specify their duration (an initial contract may not exceed eight years; a renewal contract may not exceed two years) and include standards by which DMV may supervise and evaluate the contractor. DMV may award performance bonuses of up to $90,000 in the aggregate to contractors based on their performance. These requirements apply to all contracts entered on or after July 1, 2015. Existing contracts must meet the new requirements by July 1, 2018. The act also increases transaction fees for which contractors may be compensated, effective July 1, 2015.

Ten-day temporary license plate. Section 29.35 amends G.S. 20-183.4C, effective January 1, 2016, to eliminate the ten-day trip permit that authorized a person to drive a vehicle whose inspection or registration has expired. The act substitutes a ten-day temporary license plate, which may be issued pursuant to G.S. 20-50(b).

State Highway Patrol changes. Section 16A.7 amends G.S. 20-196.3 to remove the Commissioner of the Law Enforcement Division as a person who may hold a supervisory position over sworn members of the State Highway Patrol. Amended G.S. 20-184 provides for a State Highway Patrol Division in the Department of Public Safety (was, State Highway Patrol Section). Section 16B.3 enacts new G.S. 20-196.5 requiring the State Highway Patrol to develop recommendations for gang prevention and to report those recommendations to the legislature. These provisions are effective July 1, 2015.

7. **S.L. 2015-263 (S 513). Makes various changes to motor vehicle laws to loosen regulation of farm vehicles.** New G.S. 20-166(o) permits vehicles that do not exceed 12 feet in width and that are carrying baled hay to and from certain farm-related locations to be operated on State highways. Vehicles that exceed 10 feet in width and are carrying baled hay may only be operated during daylight hours and must display a red flag or flashing warning light on the front and rear. (*Note: S.L. 2015-264 also created a new G.S. 20-116(o), with different provisions. This discrepancy likely will be resolved by the Revisor of Statutes.*)

Amended G.S. 20-116(j) and new G.S. 20-146(a1) exempt certain farm equipment from the requirement that vehicles be operated to the right of the center line. The general rule does not apply to such equipment when the combined width of the traveling lane and the shoulder is less than the width of the equipment.

The act amends the definition of agricultural spreader vehicle in G.S. 20-51(16) to permit such vehicles, which are exempted from the requirement of registration and certificate of title, to travel up to 45 miles per hour (was 35).

New G.S. 20-171.22(a1) permits the operation of an all-terrain vehicle or utility vehicle on a public street or highway while engaged in farming operations.

Amended G.S. 20-118(c)(12) clarifies the road weight limit exceptions for transporting agricultural products and supplies. This act is effective October 1, 2015.

8. **S.L. 2015-264 (S 119): Technical Corrections Act. Extends time to meet requirement for electronic lien filing and permits oversize vehicles to be used for snow removal without a permit.** Section 40 amends G.S. 20-58.4A(i) to require individuals and lienholders engaged in the business or practice of financing motor vehicles to utilize the electronic lien system by July 1, 2016 (was January 1, 2016).

   Section 41 enacts new G.S. 20-116(o), effective October 1, 2015, which permits certain snow plows and motor graders to be operated on streets and highways without an oversize permit when used by the Department of Transportation for snow removal and snow removal training operations. (*Note: S.L. 2015-263 also created a new G.S. 20-116(o), with different provisions. This discrepancy likely will be resolved by the Revisor of Statutes.*)

9. **S.L. 2015-270 (S 370): Allows DMV to accept electronic signatures and notarizations.** New G.S. 20-52(c), effective August 1, 2016, permits electronic signatures and notarizations on applications or documents required to be submitted to DMV. New G.S. 20-58.4 (a1), effective December 1, 2015, requires a secured party to provide electronic notice of the satisfaction or other discharge of a security interest in a motor vehicle for which the certificate of title is notated by a lien through electronic means.

10. **S.L. 2015-286 (H 765): Requires small registration plates for trailers pulled by motorcycles.** Section 3.5 of this act amends G.S. 20-63(d), effective January 1, 2016, to require DMV to provide registration plates measuring approximately four by seven inches for property-hauling motorcycle trailers that are attached to the rear of motorcycles as well as to the motorcycles themselves.

    Section 3.13 amends G.S. 20-171.15, effective October 22, 2015, to make it unlawful for a parent or guardian of a child under 16 to permit the person to operate an all-terrain vehicle in violation of the affixed age restriction warning label (formerly, the permissible age was based on engine capacity). Amendments to G.S. 20-171.7 prohibit the sale of an all-terrain vehicle in violation of the age restriction warning label.

Civil Procedure and Related Statutes

Ann M. Anderson
School of Government

1. **S.L. 2015-55 (H 315) (§ 3): Claim and delivery fee deposit.** Amends G.S. 1-474 (with related amendments to 1-476 and 1-481), to provide that, upon the clerk's issuance of a claim and delivery order, the sheriff shall collect a fee deposit from the plaintiff to offset the sheriff's fees and expenses for taking and storing the seized property. Effective October 1, 2015. (Note: Although the act's title states that it relates to writs of possession, the act itself amends the claim and delivery statutes.)

2. **S.L. 2015-57 (H 597): Mediated settlement agreements; enforceability.** Amends G.S. 7A-38.1(1) (superior court civil mediation), 7A-38.3B(i) (clerk of court mediation), 7A-38.3D(l) (district criminal court mediation), and 7A-38.4A(j) (district court mediation) to provide that mediated settlement agreements are enforceable only if they are reduced to writing and signed by the "parties against whom enforcement is sought." (Previously, enforceability required signature by the "parties"). Makes a conforming amendment to G.S. 8-110(a) governing discovery and admissibility of statements made and conduct occurring in mediations. Effective July 1, 2015 and applies to agreements entered into on or after that date.

3. **S.L. 2015-107 (S 596): Enforcing foreign-country judgments.** Existing G.S. 1C-1853(b) lists instances in which North Carolina courts shall not recognize a foreign-country judgment. This act adds to this list judgments "obtained by a foreign government entity to compensate for the expenditure of public funds for government programs." Existing G.S. 1C-1853(c) lists instances in which North Carolina courts must deny enforcement of a foreign-country judgment unless the court determines as a matter of law that recognition would be reasonable under the circumstances. This act adds to that list judgments "based on a foreign statute or rule of law which, as applied by the foreign court, would have been contrary to either the United States Constitution or the North Carolina Constitution had it been applied by a court in North Carolina." The act also states that if the foreign proceeding was brought by a foreign government entity and applied laws ex post facto to the defendant's conduct or imposed liability for harms to individuals without requiring individualized proof of the elements of the claim for each such individual, the North Carolina court "shall find that the action is fundamentally unfair and its judgment is repugnant to the public policy of this State[.]" Effective June 24, 2015 and applies to recognition of foreign-country judgments on or after that date regardless of when the judgment was entered.

4. **S.L. 2015-153 (H 376) (§ 1): Expert witness discovery in civil cases.** Makes several substantive amendments to G.S. 1A-1, Rule 26(b)(4), the rule of procedure in civil cases for discovery of information about another party's expert witness. The changes include:

   No interrogatories required for expert disclosure. A party is now required to disclose—without a formal discovery request—the identity of an expert witness that it may use at trial (that is, a witness that may be used to "present evidence under Rule 702, Rule 703, or Rule 705 of the North Carolina Rules of Evidence"). The other party is no longer required to first submit formal interrogatories requesting the disclosure.

   Written report provision. If the expert is one "retained or specifically employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving

expert testimony," the disclosing party has the option of submitting a written report prepared by the expert that includes: a complete statement of the witness's opinions and the bases and reasons for them; facts the witness considered in forming the opinions; exhibits that will be used to summarize or support them; the witness's qualifications and a list of certain publications; certain prior expert testimony by the witness; and a statement of the expert's compensation. In the absence of this report, the other party may discover through interrogatories the subject matter of an expert's expected testimony; the substance of the facts and opinions to which the expert is expected to testify; and a summary of the grounds for each opinion.

Time frames for disclosure. The rule sets default time frames for submitting written reports of experts or interrogatory responses: 90 days before trial or, for rebuttals, 30 days after the opposing party's disclosure. These requirements may altered by stipulation or court order.

Depositions of experts without court order. A party may proceed to depose the expert after receiving the written report or interrogatory responses. (Before, if a party objected to its disclosed expert being deposed, the rule permitted depositions and "further discovery" only upon court order.) The deposing party "shall" pay the expert a reasonable fee for time spent at the deposition unless "manifest injustice would result" or the court orders otherwise. (Before, fees for an expert's deposition time were in the trial court's discretion.)

Certain information shielded from discovery:

Non-testifying experts. Discovery of certain information about trial-preparation experts (or "consulting" experts) is now explicitly prohibited. A party may not, through interrogatories or depositions, discover "facts known or opinions held by" these individuals who are not expected to be called as experts at trial. Exceptions are allowed as provided by Rule 35(b) (related to court-ordered examining physicians) and for "exceptional circumstances."

Draft expert reports. Drafts of the written report of an expert witness submitted in connection with the expert's disclosure are protected and "not discoverable regardless of the form in which the draft is recorded."

Communications between attorney and expert witnesses. Communications between a disclosed expert and the party's attorney are protected from discovery, regardless of the form of the communications. Exceptions apply to communications that relate to the expert's compensation for the study or testimony; that identify facts or data the attorney provided and the expert considered in forming the opinions; or that identify assumptions the party's attorney provided and the expert relied on in forming the opinions.

Effective October 1, 2015 and applies to actions commenced on or after that date. For further discussion of this session law, see the School of Government blog post here.

5. **S.L. 2015-153 (H 376) (§ 2)**: **Expert witness fees as a civil cost.** Amends G.S. 7A-314(d) to make it "subject to the specific limitations set forth in G.S. 7A-305(d)(11)." By way of explanation: G.S. 7A-305(d) lists the expenses of a party that may be recovered as costs in civil actions. In July 2007, the statute was amended to include several other types of expenses, including "reasonable and necessary fees of expert witnesses *solely for actual time spent providing testimony at trial, deposition, or other proceedings*." 7A-305(d)(11)(emphasis added). Then, in *Springs v. City of Charlotte*, 209 N.C. App. 271 (2011), the court held that the new 7A-305(d)(11) must be read in conjunction with G.S. 7A-314(d), which states that, "[a]n expert witness, other than a salaried State, county, or municipal law-enforcement officer, shall receive such compensation and allowances as the court…, in its discretion, may authorize." The court held that the language of 7A-314(d) gives the trial court discretion to also award fees of experts for time spent *attending* the trial, deposition, or proceeding, even when not testifying. *Springs* at 283–84. This new session law expressly limits the trial court's discretion in G.S. 7A-314(d) by making it "subject to the specific limitations set forth in

G.S. 7A-305(d)(11)." Thus the only expert fees to be awarded are "for actual time spent providing testimony at trial, deposition, or other proceedings." Effective October 1, 2015 and applies to motions for costs filed on or after that date. For additional discussion of this amendment, see the School of Government blog post here.

6. **S.L. 2015-200 (H 651): Limitations on actions against real estate appraisers; criminal background checks.** Adds a new section to G.S. 1-51 specifying that no action may be brought or maintained against a real estate appraiser or trainee licensed, certified or registered pursuant to Chapter 93E unless the action is commenced within five years of the date of appraisal; or until expiration of the time period for retention of the work file pursuant to the recordkeeping rule of the Uniform Standards of Professional Appraisal Practice, whichever is greater. Also amends G.S. 93E-2-4 to require a registered appraisal management company to accept an appraiser's conforming criminal background check performed within the preceding twelve months. Effective October 1, 2015 and applies to contracts entered into, renewed, or amended on or after that date.

7. **S.L. 2015-210 (H 284) (§ 1): No fines in civil contempt.** Amends G.S. 5A-21, the statute that sets out the terms of imprisonment for those found in civil contempt, to make clear that "[a] person who is found in civil contempt under this Article is not subject to the imposition of a fine." This clarification appears to be a response to *Tyll v. Berry*, 758 S.E.2d 411 (N.C. Ct. App. 2014), in which the Court of Appeals affirmed an order imposing a fine in connection with what appeared to be a civil contempt order. The amendment is effective October 1, 2015 and applies to contempt orders entered on or after that date. For additional context, see the School of Government blog post here.

8. **S.L. 2015-210 (H 284) (§ 2–4): Excuse from jury service for enrollment in out-of-state postsecondary school; jury excusal study by the Administrative Office of the Courts.** Adds a new subsection to G.S. 9-6 excusing from service a prospective juror summoned for a session during which the person is taking classes or exams at an out-of-state postsecondary public or private institution (including a trade or professional school, college, or university). The prospective juror must make the written, signed request to be excused pursuant to G.S. 9-6.1(a) and provide documentation showing enrollment at the educational institution. Effective August 11, 2015 and applies to requests for excusal made on or after that date.

   This session law also includes a directive to the Administrative Office of the Courts as follows: The Administrative Office of the Courts, in consultation with the North Carolina Conference of Clerks of Superior Court, shall study excusals from jury service. It shall consider all of the current exemptions from jury service and examine whether or not excusals should be granted for prospective jurors who are on work assignment outside the State of North Carolina. The Administrative Office of the Courts shall report its findings and any recommendations to the Joint Legislative Oversight Committee on Justice and Public Safety and the General Assembly upon the convening of the 2016 Regular Session of the 2015 General Assembly.

   The directive is effective August 11, 2015.

9. **S.L. 2015-215 (H 371) (§ 1–2): Civil action for acts of terror.** Adds a new section G.S. 1-539.2D, providing a civil action for damages for injuries caused by a terrorist, as that term is defined in the statute. A prevailing party is entitled to recover from the terrorist three times the actual damages, or $50,000, whichever is greater, as well as court costs and attorney fees (trial and appellate). The act also adds a new section to G.S. 1-51 to specify that no such action shall be brought or maintained unless commenced within five years of the date of injury. The act also specifies that a

person injured by a violation of G.S. 14-10.1 (act of terrorism) may sue for and recover treble damages, costs, and attorney fees pursuant to the new G.S. 1-539.2D. Effective October 1, 2015 and applies to acts committed on or after that date.

10. **S.L. 2015-247 (H 173) (Part XI, § 11.(a)): Authentication of records of regularly conducted activity.** Amends Rule of Evidence 803(6) (hearsay exception) to allow the custodian to authenticate a record of regularly conducted business activity by affidavit or document under seal under Rule 902. This type of authentication applies only to records of nonparties, and the proponent of the evidence must give advance notice to all other parties of its intent to authenticate by affidavit. Effective October 1, 2015.

11. **S.L. 2015-250 (H 792) (§ 1): Civil action for violation of statute prohibiting disclosure of private images.** New G.S. 14-190.5A creates the criminal offense of disclosure of private images. For a summary of this offense, see Criminal Law and Procedure, above. The new statute also provides a civil action for the person whose image is disclosed or used. The victim is entitled to recover from the disclosing party: actual damages, but not less than liquidated damages, to be computed at the rate of $1000 per day for each day of the violation or $10,000, whichever is higher; punitive damages; and reasonable attorney fees or other litigation costs reasonably incurred. The action may be brought no more than one year after the initial discovery of the disclosure, but in no event may the action be commenced more than seven years from the most recent disclosure. Effective December 1, 2015 and applies to offenses committed on or after that date and to actions initiated on or after that date.

12. **S.L. 2015-264 (S 119) (§ 32.5): Attorney fee provisions in business contracts; "sign by hand."** General Statute 6-21.6, enacted in 2011, makes certain reciprocal attorney fee provisions in business contracts valid and enforceable "only if all of the parties to the business contract *sign by hand* the business contract." G.S. 6-21.6(b) (emphasis added). This session law amends the statute to state that,

    > Signature "by hand" is not intended to prevent the application of this section to a business contract executed by either of the following:
    >
    > (1) A party's electronic signature as defined in G.S. 66-312, if the party's electronic signature originates from an affirmative action on the part of the party to evidence acceptance and execution such as typing the party's signature or writing the party's signature with a finger or stylus on a touchscreen to indicate acceptance and execution.
    > (2) A party's manual signature that is delivered by an electronic reproductive image thereof.

    This session law also removes language stating that, in actions primarily for recovery of monetary damages, the attorney fee award may not "exceed the monetary damages awarded." (The statute retains language specifying that, in such actions, the award of reasonable fees "may not exceed the amount in controversy.") Effective October 1, 2015. For further discussion of this amendment, see the School of Government blog post here.

13. **S.L. 2015-286 (H 765) (§ 1.2.(a)): Burden of proof in certain contested cases.** Adds a new section G.S. 150B-25.1 to the Administrative Procedure Act, to provide that the petitioner in a contested case has the burden of proving the facts in the petition by a preponderance of the evidence; that, in a contested case involving civil fines or penalties, the State agency has the burden of proving by clear and convincing evidence that the person committed the act for which he or she was fined or

penalized; and that an agency employer has the burden of proving by a preponderance of the evidence that a career State employee subject to G.S. Chapter 126 was discharged, suspended, or demoted for just cause. Effective October 22, 2015 and applies to contested cases commenced on or after that date.

Judicial Authority and Administration

Ann M. Anderson
School of Government

1. **S.L. 2015-75 (S 2): Recusal from performing marriages based on religious objection.** Adds a new section to G.S. Chapter 51 providing that, based on a sincerely held religious objection, every magistrate shall be permitted to recuse himself or herself from performing all lawful marriages, and every assistant and deputy register of deeds shall be permitted to recuse himself or herself from issuing lawful marriage licenses. Notice of recusal must be made to the chief district court judge (in case of a magistrate) or register of deeds (in the case of an assistant or deputy register of deeds). The recusal remains in effect for at least six months. During that time, unless the recusal is rescinded in writing, a recused magistrate may not perform any marriages under Chapter 51 and a recused assistant or deputy register of deeds may not issue any marriage licenses. The act also states that the chief district court judge shall ensure that all individuals issued a marriage license and seeking to be married before a magistrate may do so, and states that the register of deeds shall ensure that all qualifying applicants receive marriage licenses. The act makes provisions for when all magistrates in a jurisdiction have recused themselves and states that no magistrate or assistant or deputy register of deeds may be charged under G.S. 14-230 or 162-27 or be subject to discipline due to a good-faith recusal. The act also amends G.S. 7A-292 to state that the authority of magistrates to marry "is a responsibility given collectively to the magistrates in a county and is not a duty imposed upon each individual magistrate," and it directs the chief district court judge to ensure that marriages before a magistrate are available to be performed at least ten hours per week over at least three business days per week. Effective May 28, 2015. (Governor's veto overridden 6/11/2015.)

2. **S.L. 2015-66 (H 222): Retention elections for elected North Carolina Supreme Court justices.** Creates new Article 1A of Chapter 7A of the General Statutes, providing that a justice of the North Carolina Supreme Court who was elected to that office by the voters and who desires to continue in office "shall be subject to approval by the qualified voters of the whole State in a retention election at the general election immediately preceding the expiration of the elected term." Approval is by a majority of the votes cast. If the voters approve the retention, the justice is retained for a new eight-year term, and if the voters fail to approve the retention, the office is deemed vacant at the end of the term and shall be filled as provided by law. The act sets out the procedure for initiating the retention election process and provides a ballot form template. It also makes related amendments to G.S. 7A-10(a) and relevant sections of Chapter 163. (Note that the amended G.S. 163-335(b) states that an elected justice "may opt" for retention election.) Effective June 11, 2015. For analysis of this legislation, see the School of Government blog post here.

3. **S.L. 2015-87 (S 83): Amendments to false lien filing law involving property of public officer or employee.** *See* Criminal Law and Procedure, above.

4. **S.L. 2015-89 (S 161): Authorizing North Carolina Supreme Court to hold sessions in Morganton.** Amends G.S. 7A-10(a) to authorize the North Carolina Supreme Court to hold sessions not more than twice annually in the City of Morganton. Unless the court identifies as more suitable site, the court shall meet in the Old Burke County Courthouse. Effective June 19, 2015.

5. **S.L. 2015-210 (H 284) (§ 1): No fines in civil contempt.** *See* Civil Procedure and Related Statutes, above.

6. **S.L. 2015-210 (H 284) (§ 2–4): Excuse from jury service for enrollment in out-of-state postsecondary school; jury excusal study by the Administrative Office of the Courts.** *See* Civil Procedure and Related Statutes, above.

7. **S.L. 2015-218 (H 184) (§ 3): Time limit on public record confidentiality; exemptions for certain records.** Creates new G.S. 132-11 to provide that all restrictions on access to public records expire 100 years after the creation of the record. The expiration does not, however, apply to any record that meets any of the following criteria: (1) it is ordered to be sealed by any state or federal court, except as provided by that court; (2) it is prohibited from being disclosed under federal law, rule, or regulation; and (3) it contains federal Social Security numbers; (4) it is a juvenile, probationer, parolee, post-releasee, or prison inmate record, including medical and mental health records; or (5) it contains detailed plans and drawings of public buildings and infrastructure facilities. Effective August 18, 2015 and applicable to a public records in existence on or created after that date.

8. **S.L. 2015-241 (H 97) (§ 18A.19, pages 319–20): Three special superior court judgeships eliminated; designation as business court judge.** This section of the appropriations bill amends G.S. 7A-45.1 to abolish three special superior court judgeships at the current judge's retirement, resignation, removal from office, death, or expiration of term. The Chief Justice is requested to designate the special judgeship created by subsection (a9) as a business court judge. The Chief Justice is also requested, under the Chief Justice's authority under G.S. 7A-45.3 to designate business court judges, to maintain at least five business court judgeships among the authorized special superior court judgeships. Effective July 1, 2015.

9. **S.L. 2015-241 (H 97) (§ 30.3, pages 387–388): Judicial Branch salaries.** This section of the appropriations bill sets forth judicial branch salaries for the 2015–2017 biennium. Effective July 1, 2015.

10. **S.L. 2015-292 (H 8): Party designation in Court of Appeals elections.** Amends G.S. 163-323 to require a candidate for North Carolina Court of Appeals judge, when filing notice of candidacy, to indicate the political party with which that candidate is affiliated or any unaffiliated status. The party designation or unaffiliated status must be verified and must be included on the ballot. Effective October 29, 2015 and applicable to elections held on or after that date.

Selected Legislation of Interest to Clerks of Superior Court

Meredith Stone Smith
School of Government

GENERAL CIVIL

S.L. 2015-55 (H 315): Summary ejectment; claim and delivery. Effective October 1, 2015.

- Clarifies G.S. 42.36.2(a) related to summary ejectment to only require the sheriff to return the writ unexecuted to the clerk if the sheriff receives a statement from the landlord that the landlord does not want to eject the tenant. The sheriff no longer has to return the unexecuted writ to the clerk if the sheriff receives a statement from the landlord that the landlord authorizes the tenant's property to remain on the premises.
- Amends G.S. 1-474 to add a new subsection (c) to allow the sheriff, upon issuance of the clerk's order of seizure and delivery, to collect a fee deposit from the plaintiff in a claim and delivery action to offset the reasonable and necessary fees and expenses for taking and storing the property seized. Also amends G.S. 1-476 to state that sheriff's duties do not commence until receipt of clerk's order and fee deposit. Also amends G.S. 1-481 to provide that the deposit goes back to the plaintiff, less the actual costs, if the property is then delivered by the sheriff to the plaintiff; the deposit goes back to the plaintiff in full if the property is delivered to a third party.

RECORDKEEPING + BOOKKEEPING

S.L. 2015-87 (S 83): False lien filing law involving property of public officer, employee, or their spouse or child is amended. Effective for filings on or after October 1, 2015.

- **New Lien Presented for Filing with the Clerk**. Adds a new subsection (b1) to G.S. 14-118.6 (filing false lien or encumbrance against the real or personal property of a public officer, public employee, or the spouse or children of the same) to provide when a lien or encumbrance (hereafter, lien) as described in subsection (a) is presented to the clerk of superior court for filing and the clerk has a reasonable suspicion that it is false, the clerk may refuse to file the lien. Neither the clerk nor members of the clerk's staff are liable for filing or refusing to file a lien. The clerk must not file, index, or docket the document against the property of a public officer or employee until that document is approved for filing by any judge of the judicial district having subject matter jurisdiction. If the clerk receives an order from the judge that the lien is false, the clerk shall serve the order along with the original denied filing to the person who presented it. The person then has 30 days to appeal. If not appealed in 30 days, the clerk may destroy the filing. If the judge determines the lien is not false, the clerk shall index the lien.
- **False Liens Previously Filed**. If a clerk receives an order that a lien already filed is false, the clerk shall file the order and mark the first page of the false filing conspicuously with the following language: "THE CLAIM ASSERTED IN THIS DOCUMENT IS FALSE AND IS NOT PROVIDED FOR BY THE GENERAL LAWS OF THIS STATE."

S.L. 2015-216 (S199): Funds Deposited with Clerk of Court. Effective September 1, 2015, amends G.S. 7A-112 to increase the amount of funds in a single account on deposit with the clerk above which the excess must be invested from $2,000 to $10,000.

S.L. 2015-40 (H 224/S 270): AOC Omnibus Changes. Effective December 1, 2015.

- **State Publications to State Surplus**. Amends G.S. 14-421 to allow the clerk to transfer acts of the General Assembly or the appellate division reports to state surplus if the clerk determines that they are no longer necessary to the operation of his or her office.
- **Conditional Discharge Reports**. Amends G.S. 15A-150(a) to eliminate duty of clerk to file with AOC names of persons granted conditional discharge under G.S. 14-50.29, G.S. 90-96, G.S. 90-113.14, or G.S. 15-204.
- **Duplicative/Outdated Reporting Eliminated**. Repeals G.S. 148.32.1(c) (copy of commitment order of prisoner sentenced for conviction of impaired driving sent to Post-Release Supervision and Parole Commission) and G.S. 7A-110 (list of attorneys practicing law in the county sent to Secretary of Revenue).

ESTATES + GUARDIANSHIP

S.L. 2015-205 (S 336): Estate Planning/Uniform Trust Code.

- **Standby Guardianship.** Effective August 11, 2015. Amends Article 21 of Chapter 35A to allow for standby guardianship for adults in addition to minors. The process for adults mirrors the existing process for minors. The general guardian or guardian of the person may petition for standby guardianship of an adult by filing a motion in the cause in the county where the guardianship is docketed. The motion shall be served as a motion in the cause under G.S. 35A-1207 via Rule 5 service. The standby guardianship of the adult continues until revocation or renunciation pursuant to Article 21 of Chapter 35A.
- **Living Probate.** Effective August 11, 2015. Creates a new Article 28A-2B to provide for living probate.
    - **Initiating the Process.** The person who executed the will or codicil (hereinafter, referred to jointly as the will) initiates the process by filing a petition in the county of his or her domicile. The petition must contain certain statements set forth in G.S. 28A-2B-3 and the original will must be filed along with the petition. The matter is heard by the clerk as a contested estate proceeding to which Article 2 of Chapter 28A applies. Upon filing of the petition, the clerk must issue the estate proceeding summons to each respondent. The petitioner must serve all respondents (interested persons) via Rule 4 service and the clerk may order additional persons joined as respondents, in the clerk's discretion.
    - **Hearing before the Clerk.** The petitioner must present evidence at the hearing before the clerk that the will or codicil would be admitted to probate if the petitioner were deceased. If an objection is raised to the validity of the will, either in writing prior to the hearing or at the hearing, then the clerk must transfer the matter to superior court and the matter is heard as if it were a caveat proceeding.
    - **Clerk's Order.** If no objection is raised and the clerk determines the will would be admitted to probate if the petitioner were deceased, the clerk must enter an order that the will is valid and affix a certificate of validity to the will. The clerk may include in his or her order, on the motion of a party or on the clerk's own motion, that the will may not be revoked and no subsequent new will shall be valid unless the petitioner returns to the court to have such revocation and/or subsequent new will declared valid by the clerk. If the clerk does not include this in his or her order, then the will may be revoked by subsequent actions by the petitioner and the petitioner may execute a new will

without coming back to court that replaces the will previously deemed valid by the court.

- **Effect of the Court's Order.** Once the court enters an order, no interested person who was a party to the proceeding may file a caveat or otherwise challenge the validity of the will unless a subsequent will or revocation is completed. Then a party may challenge the subsequent will and/or revocation. In addition, if an interested person is able to show by clear and convincing evidence of financial or physical duress or coercion of petitioner before or during the hearing so significant that the petitioner would not have reasonably disclosed it at the hearing, then the interested person may file a motion with superior court to be permitted to file a caveat.
- **Confidentiality.** If after the clerk's order is entered as to the validity of the will, a party moves to seal the contents of the file, then the clerk shall seal the contents from public inspection. The contents may only be released by order of the clerk to the petitioner, the attorney for the petitioner, the court hearing the matter, or other person for good cause shown. Upon the petitioner's death, the contents may be unsealed upon the request of any interested person for the purpose of probate or other estate proceeding.
- **Costs and Fees.** The court in its discretion may tax costs, including attorneys' fees, against any party, or apportion them among the parties, except if a party contests the proceeding, then the court shall only allow attorneys' fees if there were reasonable grounds for contesting the proceeding.

- **Uniform Powers of Appointment Act.** Effective August 11, 2015. Creates a new Chapter 31D adopting the Uniform Powers of Appointment Act and codifies the law of powers of appointment, which are used by estate planners to give a third-party the authority to direct the disposition of a donor's property to specified recipients in response to future events.
- **Elective Share**. Effective August 11, 2015. Amends G.S. 30-3.3A(e) regarding partial or contingent interests in property to provide that the clerk has discretion, upon good cause shown, to determine that the use of mortality and annuity tables is not appropriate and to determine the value of such interests in accordance with existing subsection (f) of G.S. 30-3.3A. Also deletes the provision that provides that to the extent valuation of a partial or contingent interest is dependent upon the life expectancy of the spouse, the life expectancy shall be conclusively presumed to be no less than 10 years regardless of the spouse's actual age.
- **Conveyance of Tenancy by the Entireties Property to Trust.** Effective August 11, 2015. Amends G.S. 39-13.7 to provide that any property held by husband and wife as tenants by the entireties and conveyed to a joint trust or in equal shares to two separate trusts shall no longer be held as tenants by the entirety but shall have the same immunity from the claims of creditors as if they did hold it as tenants by the entireties as long as (i) they remain married, (ii) the real property is held in trust, and (iii) both the husband and wife are current beneficiaries of the joint or separate trust. Also provides that the trustee acting under the trust provisions or with the express consent of the husband and wife may waive the immunity from claims of separate creditors as to specific creditors or any specific property or all former tenancy by the entirety property.
- **Uniform Trust Code.** The following provisions are effective October 1, 2015 and apply to (i) all trusts created before, on, or after that date, (ii) all judicial proceedings concerning trusts or transfers commenced on or after that date, and (iii) all judicial proceedings concerning trusts or transfers to or by trusts commenced before that date, unless the court finds the application of a provision would substantially interfere with the conduct of the judicial proceeding or prejudice the rights of the parties, in which case the law as of September 30, 2015 applies.

- **Statute of Limitations.** Amends G.S. 36C-10-1005(b) to provide that the limitations of actions on judicial proceedings involving trusts includes persons entitled to represent under Article 3 of Chapter 36C and that G.S. 1-17 shall not apply to toll the limitation as to persons entitled to represent.
- **Default and Mandatory Rules.** Amends G.S. 36C-1-105 to clarify the applicability of default and mandatory rules to power holders in addition to trustees.
- **Decanting.** Amends G.S. 36C-8-816.1 to (i) provide that the second trust may have a duration that is longer than the first trust, (ii) limit what the terms of the second trust may include, and (iii) set forth and clarify additional terms when the second trust is a supplemental needs trust.
- **Inter Vivos Trust.** Amends G.S. 36C-5-505(c) to add and clarify the following exceptions within the existing exceptions that allow property contributed to a trust not to be deemed to be contributed by settlor if:
  - (1) The settlor is a beneficiary after the death of the settlor's spouse, of, among others, (i) a qualified terminable interest trust, or (ii) an irrevocable inter vivos trust of which the settlor's spouse is a beneficiary during the spouse's lifetime but which does not qualify for the federal marital gift tax deduction and during the life of the spouse (a) the spouse is the only beneficiary, or (b) the spouse and the settlor's issue are the only beneficiaries; and
  - (2) An irrevocable inter vivos trust for the benefit of a person if the settlor is the person's spouse.
- **Standard of Lability of Directed Co-trustee**. Amends G.S. 36C-7-703 to revise and clarify the standard of liability of a co-trustee.

S.L. 2015-165 (H 350): DMV to restore driver's license of person adjudicated to be restored to competency. Creates a new G.S. 20-17.1A, effective October 1, 2015, that provides that if a person is otherwise eligible for a driver's license under G.S. 20-7 and other statutes, the Division of Motor Vehicles must restore the driver's license of a person adjudicated to be restored to competency under G.S. 35A-1130 when it receives notice from the clerk of the court in which the adjudication was made. The clerk of superior court shall send a certified copy of the order of restoration to DMV.

S.L. 2015-203 (H556): Achieving a Better Life Experience (ABLE) Act. Effective August 4, 2015, creates new Article 6E under G.S. Chapter 147 to allow for the establishment and maintenance of savings accounts in an ABLE Program Trust administered by board of trustees for the purpose of enabling individuals with disabilities to save funds to meet the costs of qualified disability expenses, as authorized by the federal ABLE Act.

- Under G.S. 147-86.50, the account may be established by an eligible individual, which is defined under federal law at 26 U.S.C. 529A(e)(1), or a guardian or agent under a power of attorney acting on behalf of an account owner; the eligible individual is the account owner and designated beneficiary.
- Pursuant to G.S. 147-86.51(b):
  - An account is established by making an initial contribution to the ABLE Program Trust, signing an application form, and naming the designated beneficiary. If the contributor is not the account owner, the account owner or the account owner's guardian, trustee, or agent must also sign the application form.
  - Any person may make contributions to an account after the account is opened; contributions must be in cash and not exceed maximum limits imposed by the federal ABLE act.

    - An account owner may change the designated beneficiary of an account to an eligible individual who is a member of the family of the former designated beneficiary. At the direction of an account owner, all or a portion of an account may be transferred to another account of which the designated beneficiary is a member of the family of the designated beneficiary of the transferee account if the transferee account was created pursuant to this section or in accordance with the federal ABLE Act.
- Pursuant to G.S. 147-86.51(c), the board of trustees is authorized to accept, hold, invest, and disburse contributions in trust for the benefit of the designated beneficiaries; neither the contributions to the trust nor earnings thereon are considered state money; and the account or legal or beneficial interest in an account is not subject to attachment, levy, or execution by a creditor of the designated beneficiary.
- Pursuant to G.S. 147-86.51(d), the board must administer the trust to ensure, in part, that
    - a designated beneficiary is limited to one ABLE account;
    - an ABLE account may be established only for a designated beneficiary who is a resident of North Carolina or a resident of a contracting state;
    - an account or a legal or beneficial interest in an account is not assignable, pledged, or otherwise used to secure or obtain a loan or other advancement;
    - separate records and accounting are maintained for each ABLE account;
    - reports are made no less frequently than annually to each ABLE account owner; and
    - a trustee or guardian appointed as a signatory of an ABLE account does not have or acquire any beneficial interest in the account and administers the account for the benefit of the designated beneficiary.
- G.S. 147-86.52 defines who must be members of the board, the terms, duties and immunity of the members, and the board's reporting obligations to the Joint Legislative Oversight Committee on Health and Human Services.
- G.S. 147-86-53 describes the administration of the ABLE Program by the board, which the board may delegate to the State Treasurer. The State Treasurer may establish application, account, and administration fees in order to offset the costs of the program.
- G.S. 147-86.53(d) provides that an ABLE account is not considered a resource for purposes of means-tested State benefits; distributions are not considered income for any State benefits eligibility program that limits eligibility based on income.
- Pursuant to new G.S. 147-86.53(e) the State has a Medicaid claim on the funds in the ABLE account after death of beneficiary in amount equal to total medical assistance paid. The State may file claim within 60 days of receiving death notice from State Treasurer. The remaining funds in the account are distributed as provided in account agreement or to the decedent's estate if no designation made.
- Pursuant to G.S. 147-86.53(g), the Notice of Medicaid claim must be provided to personal representative on form prescribed by DHHS.

ADOPTION

S.L. 2015-54 (H 293): Adoption Law Changes.

1. **Hague Adoption Convention**. Effective May 26, 2015, adds new G.S. 48-1-108A to provide that if the adoptee's adoption is subject to the Hague Adoption Convention (as defined therein) that the convention shall control the adoptee's adoption. Documentation establishing whether the convention applies to an adoptee may be filed and copies certified by the court before or after an adoption decree is granted.

2. **Jurisdiction**. Amends G.S. 48-2-100(c) to allow a court of another state exercising jurisdiction to dismiss the proceeding in that state at any time prior to entry of the adoption decree in NC rather than the previous requirement that the out of state court dismiss at least 60 days after the filing of the adoption petition for the NC court to be able to enter an adoption decree.
3. **Pre-Birth Right to Consent**. Amends G.S. 48-2-206 to change the time for filing a pre-birth right to consent special proceeding from any time six months after conception to any time three months after conception. Also increases the time from 15 to 30 days for a biological father to assert a claim that his consent is required. Also increases time for response to service by publication under G.S. 48-2-401(f) to 40 days after first publication.
4. **Preplacement Assessment**.
    a. Amends G.S. 48-3-202(b) to provide that the agency preparing the preplacement assessment may redact the information set forth in G.S. 48-3-303(c)(12).
    b. Amends G.S. 48-3-301(b) to add that a preplacement assessment is not required in an independent adoption when a prospective adoptive parent is a half sibling in addition to the other listed relatives who are already not required to have a preplacement assessment.
5. **Consent Not Required**. Amends G.S. 48-3-603(a)(7) to provide that if service is by publication, an individual shall have 40 days from the first publication notice to respond.
6. **Consent by Parent Under 18**. Amends G.S. 48-3-605(b) to provide that an individual under 18 may be identified by an affidavit of an adult relative, teacher, licensed social worker, or a health service provider in addition to other means of identification.
7. **Consent/Relinquishment**. Amends G.S. 48-3-606(2) and G.S. 48-3-703(a)(2) to state that consent or a relinquishment, respectively, may include the mailing address of the individual executing the consent if the person does not have a permanent address.

S.L. 2015-264 (S 119): Technical Corrections. Effective October 1, 2015, Section 44 amends G.S. 48-3-605 to add subsection (g), which gives the clerk of superior court, the superior court, and district court jurisdiction to accept voluntary consents for adoption under the Indian Child Welfare Act (ICWA) or the laws of other states, and to determine whether good cause exists to deviate from adoptive placement preferences under ICWA. The new subsection is referenced in G.S. 48-3-702(b) regarding relinquishments.

FORECLOSURE; REAL PROPERTY

S.L. 2015-56 (H 513): Real Property/Technical Corrections. Effective May 28, 2015.
1. **Satisfaction of Security Instrument**. Amends G.S. 45-36.10(c) to provide that unless the satisfaction expressly states that (i) the underlying obligation secured has been extinguished and (ii) the underlying note has been cancelled, the recording does not extinguish liability of a person for payment or performance of the secured obligation.
2. **Transfer of Special Declarant Rights**. Amends G.S. 47C-3-104 to provide changes to transfer of special declarant rights in the event of a foreclosure of a security instrument.

S.L. 2015-178 (H 174): Landlord/Tenant-Foreclosure and Eviction Changes. Effective October 1, 2015:
- **Less than 15 Rental Units, Includes Single-Family**. Amends G.S. 45-21.17 to clarify that a residential property that contains less than 15 rental units includes single-family residential real property.
- **Tenant's Termination May Not be More than 90 Days After Sale Date**. Amends G.S. 45-45.2 to provide that a tenant who receives notice of a foreclosure may terminate the lease by giving

written notice of termination that is no more than 90 days after the sale date in the notice of sale, provided that the mortgagor has not cured the default at the time the tenant provides notice.

- **Contents of Notice of Sale**. Amends G.S. 45-21.16A to provide that a notice of sale on property with 15 rental units or less must include reference to the fact that the tenant may provide written notice of termination for a date that is not more than 90 days from the date of sale.
- **Order for Possession**. Amends G.S. 45-21.29(k) to provide that where a single-family residence is occupied pursuant to a lease, prior to entering an order for possession, the clerk must confirm that the purchaser sent the tenant notice to vacate at least 90 days before making the application for possession with the clerk if (i) tenant has an oral lease or lease terminable at will, and (ii) purchaser will occupy as primary residence. A notice is not required for (1) options to purchase, or (2) lease of residential property where there is an imminently dangerous condition as defined in G.S. 42-42(a)(8) as of the take of acquisition of title by the purchaser.
- **Effect of Foreclosure on Pre-Existing Tenancy**. Creates new G.S. 45-21.33A to provide that unless a purchaser at foreclosure will reside in a single-family residence as their primary residence, purchaser assumes title subject to the rights of a tenant for remainder of lease term or one year, whichever is shorter. This provision only applies if (i) the tenant is not the debtor or child, spouse, or parent of the debtor, and (ii) the lease is in writing, not terminable at will and for not substantially less than fair market value rent, provided the rent has not been reduced or subsidized due to federal or state subsidy.

Family Law

Cheryl Daniels Howell
School of Government

S.L. 2015-173 (H 59): Regarding 50B and 50C Orders: No Recording Required for Ex parte Hearings. Amends GS 7A-198 in response to *Stancill v. Stancill,* 773 SE2d 890 (NC App June 16, 2015) wherein the court of appeals held that ex parte proceedings in a Chapter 50B case are civil trials that must be recorded pursuant to GS 7A-198. The legislation amends GS 7A-198(e) to specify that reporting will not be required for "ex parte or emergency hearings before a judge pursuant to Chapter 50B or 50C of the General Statutes."

The amendment applies to ex parte hearings conducted on or after July 31, 2015.

S.L. 2015-176 (S 192): Regarding 50B and 50C Order: Electronic Transmittal of Orders to Law Enforcement. Amends GS 50B-3(c) to provide that "law enforcement agencies shall accept receipt of copies of the [DVPO issued in Chapter 50B case] issued by the clerk of court by electronic or facsimile transmission for service on defendants." The amendment was effective August 5, 2015.

The legislation adds the same language to GS 50C-9(b) relating to the service of Civil No-Contact Orders.

S.L. 2015-25 (H 79): Regarding 50C Civil No-Contact Orders: Allow Criminal Contempt for Violations. Amends GS 50C-10 to clarify that both civil and criminal contempt can be used to address violations of no contact orders entered pursuant to Chapter 50C. The amendment was enacted in response to *Tyll v. Berry*, 758 SE2d 411 (NC App 2014), wherein the court of appeals indicated that the original version of GS 50C-10 allowed only civil contempt to be used in response to a violation of a Civil No-Contact Order. Amendment applies to orders entered on or after October 1, 2015.

S.L. 2015-284 (H 284): Regarding 50B and 50C Orders: No Fines for Civil Contempt. Amends civil contempt statute GS 5A-21 to specify that a person found in civil contempt is not subject to the imposition of a fine. The only remedy allowed for civil contempt is imprisonment until respondent complies with the purge condition. Amendment enacted in response to *Tyll v. Berry*, 758 SE2d 411 (NC App 2014), wherein the court upheld the trial court's imposition of a fine after holding respondent in civil contempt. Amendment applies to civil contempt orders entered on or after October 1, 2015.

S.L. 2015-62 (H 465): Regarding 50B and 50C Orders: **Electronic Filing.** Creates new GS 7A-343.6 to authorize the Administrative Office of the Courts to develop a program for electronic filing in 50B and 50C cases in all counties. Each district is required to adopt local rules permitting the clerk to accept electronically filed 50B and 50C complaints when they are transmitted from a domestic violence program. This provision was effective June 5, 2015.

For orders entered on or after December 1, 2015, Chapters 50B and 50C are amended to specify that all documents filed, issued, registered, or served relating to an ex parte, emergency, or permanent DVPO or Civil No-Contact Order may be filed electronically. The amendment also authorizes video conferencing for hearings requesting ex parte or emergency DVPOs or Civil No-Contact Orders. The amendment specifies that hearings for a permanent DVPO or Civil No-Contact Orders cannot be conducted through video conference.

S.L. 2015-91 (S 60): New Chapter 50D Permanent Civil No-Contact Order. Effective October 1, 2015, creates new Chapter 50D authorizing the entry of a Permanent Civil No-Contact Order for victims of sex

offenses. The new Chapter appears to anticipate an expedited trial of the request for the injunction in that it provides that a defendant must be informed that he/she has 10 days within which to file an Answer. However, the statute does not provide specifically for a trial within any particular period of time and it does not authorize ex parte or temporary relief. The legislation directs the AOC to create the appropriate forms to implement the process.

The new chapter allows the court to issue a protective order for a plaintiff against a person who has been convicted of committing a sex offense against the plaintiff when the court finds that plaintiff did not request a no-contact order in the criminal case pursuant to GS 15A-1340.50 and finds that there are reasonable grounds for the victim to fear future contact with the respondent. The protective order will stay in effect for the lifetime of the respondent, subject to the right of the victim to request that the court rescind the protective order because she/he no longer has reason to fear contact with the respondent.

The protective order can order the respondent not to threaten, visit, assault, molest or otherwise interfere with the victim, to not follow, harass, abuse or contact the victim, and to stay away from the victim's school, residence, employment or other specified place. The statute also authorizes any other relief deemed necessary and appropriate by the court. Violation of a permanent no-contact order is punishable by contempt and is a Class A1 misdemeanor.

S.L. 2015-117 (S 488): Update to UIFSA – The Uniform Interstate Family Support Act. Makes numerous amendments to Chapter 52C to conform North Carolina law to the revised Uniform Family Support Act adopted by the Uniform Laws Commissioners in 2008.

The following summary of the new act was prepared by the Uniform Laws Commission:

The Uniform Interstate Family Support Act (UIFSA) provides universal and uniform rules for the enforcement of family support orders by: setting basic jurisdictional standards for state courts; determining the basis for a state to exercise continuing exclusive jurisdiction over a child support proceeding; establishing rules for determining which state issues the controlling order in the event proceedings are initiated in multiple jurisdictions; and providing rules for modifying or refusing to modify another state's child support order.

In November 2007, the United States signed the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance ("the Convention"). This Convention contains numerous provisions that establish uniform procedures for the processing of international child support cases. In July 2008, the Uniform Law Commission amended UIFSA to incorporate changes required by the Convention. In order for the United States to fully accede to the Convention it was necessary to modify UIFSA by incorporating provisions of the Convention that impact existing state law. The 2008 UIFSA amendments serve as the implementing language for the Convention throughout the states. Importantly, enacting the UIFSA amendments will improve the enforcement of American child support orders abroad and will ensure that children residing in the United States will receive the financial support due from parents, wherever the parents reside.

The bulk of the 2008 amendments are housed in a new section of UIFSA: Section 7. The new section provides guidelines and procedures for the registration, recognition, enforcement and modification of foreign support orders from countries that are parties to the Convention. Specifically, Section 7 provides that a support order from a country that has acceded to the Convention must be registered immediately unless a tribunal in the state where the registration is sought determines that the language of the order goes against the policy of the state. Once registered, the non-registering party receives notice and is allowed the opportunity to challenge the order on certain grounds. Unless one of the grounds for denying recognition is established, the order is to be enforced. Additionally, Section 7 requires

documents submitted under the Convention be in the original language and a translated version submitted if the original language is not English.

In September 2014, Congress passed federal implementing legislation for the Convention. Importantly, the new law (the Preventing Sex Trafficking and Strengthening Families Act) requires that the 2008 UIFSA amendments be enacted in every jurisdiction as a condition for continued receipt of federal funds supporting state child support programs. Failure to enact these amendments during the 2015 legislative session may result in a state's loss of this important federal funding.

S.L. 2015-220 (H 308): Change to Law Regarding Ordering Health Insurance Coverage. Between 1984 and 2008, regulations from the federal child support enforcement program provided that insurance available through an employer was coverage available at a reasonable cost. See 71 FR 54965 (Sept. 20, 2006) (explaining history of federal medical support regulations). This provision was based on the assumption that employer coverage was widely available and heavily subsidized. To conform to the federal regulations, GS 50-13.11(a1) provided that "health insurance for the benefit of the child is considered reasonable in cost if it is employment related or other group insurance, regardless of service delivery mechanism."

The court of appeals held that this provision did not mean that a trial court could not determine that some other insurance was available at a reasonable cost; it meant only that if coverage was available through an employer or other group plan, insurance coverage must be ordered. *Reams v. Riggan*, 224 N.C. App. 78 (2012). In addition, the court of appeals held that the employer coverage did not necessarily need to be provided through the parent's employer. *See Ludlam* (insurance provided by mother's new husband's employment can be considered reasonably priced insurance if appropriate findings are made; there would be no inherent error in ordering mother to pay insurance premiums for coverage provided through husband's employer).

Recognizing that employer provided insurance has become less available and more expensive, federal regulations were changed in 2008 to remove the requirement that employer coverage be considered coverage available at a reasonable cost. The regulations now provide that cost of coverage is considered reasonable if the cost to the parent "does not exceed five percent of his or her gross income or, at State option, a reasonable alternative income-based numeric standard defined in State law… ". 45 CFR 303.31(b)(1).

Despite the change to federal law, GS 50-13.11(a1) remained unchanged until this legislative session. However, acknowledging the change in the federal rules, the 2015 Child Support Guidelines effective January 1, 2015, removed the statement that employer coverage is coverage available at a reasonable cost and replaced it with the general statement that coverage must be ordered when available to a parent at a reasonable cost.

S.L. 2105-220 (H 308) amends GS 50-13.11(a1) to conform to federal law. For child support orders issued on or after August 18, 2015, the statute provides:

> "health insurance for the benefit of the child is considered reasonable in cost if the coverage for the child is available at a cost to the parent that does not exceed five percent (5%) of the parent's gross income. In applying this standard, the cost is the cost of (i) adding the child to the parent's existing coverage, (ii) child-only coverage, or (iii) if new coverage must be obtained, the difference between the cost of the self-only and family coverage."

The legislation makes no change to the provision providing that the court also may require one or both parties to maintain dental insurance.

Juvenile Delinquency Law

LaToya B. Powell
School of Government

S.L. 2015-41 (H295): Juvenile Media Release.

- Amended G.S. 7B-3102(a) requires the Division of Juvenile Justice to release a statement about the level of threat posed by an escaped juvenile, only if deemed appropriate by the Division. Currently the statute requires the Division to release such a statement within 24 hours of a juvenile's escape without making an appropriateness determination. The level of threat posed by the escaped juvenile shall be determined by the Deputy Commissioner of Juvenile Justice or the Deputy Commissioner's designee. This Act became effective on May 29, 2015, when it was signed into law.

S.L. 2015-47 (H294): Prohibit Cell Phones to Delinquent Juveniles.

- Amended G.S. 14-258.1(d) extends the provisions of this statute to delinquent juveniles who are in the custody of the Division of Juvenile Justice. A Class H felony offense is committed by (1) directly providing a cell phone to a delinquent juvenile who is in the custody of the Division of Juvenile Justice or (2) indirectly providing a cell phone to a delinquent juvenile who is in the Division's custody by giving it to another person for delivery to the juvenile. A delinquent juvenile is in the custody of the Division for purposes of this statute when the juvenile is confined in a youth development center or detention facility or being transported to or from such confinement. This Act becomes effective on December 1, 2015, and applies to offenses committed on or after that date.

S.L. 2015-58 (H879): Juvenile Code Reform Act.

- This Act makes several changes to the Juvenile Code designed to increase due process protections for juveniles, reduce further entry of juveniles in the delinquency system, and reduce juvenile confinement. The entire Act becomes effective on December 1, 2015, and applies to offenses committed on or after that date.

Due Process Protections

- **Custodial Interrogation Age Increase**. Amended G.S. 7B-2101(b) increases from 13 to 15 the age at which a juvenile must have a parent or attorney present during a custodial interrogation in order for the juvenile's statement to be admissible. The practical effect of this change is that juveniles who are 14 or 15 may no longer waive the right to have a parent or attorney present during a custodial interrogation.

- **Bifurcated Hearing Requirement**. Amended G.S. 7B-2202(f) and G.S. 7B-2203(d) require that adjudication hearings be held separately from hearings to determine probable cause and transfer. This change will reverse several decisions by the Court of Appeals which held that entirely separate hearings for determining probable cause, transfer, and adjudication were not required by the Juvenile Code, "so long as the juvenile's constitutional and statutory rights are protected." *See In re G.C., __ N.C. App. __, 750 S.E. 2d 548 (2013); In re J.J., Jr.*, 216 N.C. App. 366 (2011). Although the adjudication hearing must "be a separate hearing," it may still occur on the same day as probable cause and transfer, unless continued by the court for good cause.

- **Motion to Suppress Procedure**. New G.S. 7B-2408.5 establishes a procedure for filing motions to suppress in juvenile court, which is substantially similar to G.S. 15A-977 (motions to suppress in superior court). Motions to suppress may be filed before or during the adjudication hearing. Motions made prior to the adjudication hearing must be in writing, supported by an affidavit, and served upon the State. The State may file an answer, which must be served on the juvenile's counsel, or the juvenile's parent or guardian, if the juvenile has no counsel. The court must summarily grant the motion under certain conditions and may summarily deny the motion under certain other conditions enumerated in the statute. If no summary determination is made, the court must hold a hearing and state its findings of fact and conclusions of law in the record. An order denying a motion to suppress may be reviewed upon an appeal of a final order in the juvenile matter. The exclusionary rule of G.S. 15A-974 also applies to this section. Although the Court of Appeals has interpreted G.S. 15A-974 as requiring the exclusion of evidence obtained as a result of a "substantial violation" of Chapter 15A, when applied to juveniles, the statute will likely be interpreted to exclude evidence obtained as a result of a substantial violation of Chapter 7B.

Reducing Further Entry of Juveniles in the Delinquency System

- **Petition Procedure for New Offenders**. Amended G.S. 7B-1701 requires that upon receipt of a complaint alleging a divertible offense, juvenile court counselors must "make reasonable efforts" to meet with the juvenile and the juvenile's parent or guardian, if the Division has not previously received a complaint against the juvenile. This provision suggests that the General Assembly believes that meeting personally with juveniles and their parents will influence court counselors to approve more diversions and file fewer juvenile petitions.

- **Voluntary Dismissal by Prosecutor**. New G.S. 7B-2404(b) authorizes prosecutors to voluntarily dismiss a juvenile petition with or without leave. If the prosecutor dismisses a petition with leave because the juvenile failed to appear in court, the petition may be refiled, "if the juvenile is apprehended or apprehension is imminent." This change removes uncertainty about a prosecutor's authority to dismiss juvenile cases (which, in practice, already occurs) and creates a uniform procedure for doing so. However, the last sentence of the statute may lead to questions regarding whether refiling the petition is permitted only when a dismissal with leave is based on the juvenile's failure to appear.

- **Prior Adjudication Definition**. Amended G.S. 7B-2507 defines a "prior adjudication" as "an adjudication of an offense that occurs before the adjudication of the offense before the court." Although not explicit in the statute, the "offense before the court" refers to the offense for which a disposition is being entered. This change reverses *In re P.Q.M.*, 754 S.E.2d 431 (2014), which defined a prior adjudication as an adjudication that existed prior to the disposition hearing and entry of the disposition (similar to prior convictions under Structured Sentencing). Presumably, the new definition will reduce the number of adjudications that count towards a juvenile's delinquency history, thereby reducing the length and type of confinement authorized at disposition.

- **Extension of Probation**. Amended G.S. 7B-2510(c) provides that prior to the expiration of an order of probation, the court may extend the term for an additional period of one year, after notice and a hearing (currently, the statute only requires a hearing). The extension hearing may occur after the probation term has expired at the *next regularly scheduled court date* or at the court's discretion, if the juvenile fails to appear in court. This change makes clear that a juvenile must

receive notice of the extension prior to the expiration of the term. It also shortens the time period in which a court may hold the extension hearing after the term has expired, which the Court of Appeals previously described as "a reasonable time after its expiration." *In re T.J.*, 146 N.C. App. 605, 607 (2001). Although not explicitly stated, the "next regularly scheduled court date," refers to the next regularly scheduled session of juvenile court in the city or county where the order was entered, similar to expedited custody review hearings, required under G.S. 7B-1906(a) when a secure custody order is issued by a court counselor.

- **Probation Violation Dispositions**. Amended G.S. 7B-2510(e) provides that when a juvenile violates probation, the court may either increase the disposition level to the next higher level on the disposition chart or order up to twice the amount of detention days authorized by G.S. 7B-2508, but may not do both, as currently authorized.

- **Notice of Right to Expunction**. New G.S. 7B-2512(b) requires the trial judge to inform the juvenile, either orally or in writing, about the juvenile's right to expunction under G.S. 7B-3200, if relevant to the juvenile's case, at the time of entering the disposition.

Reducing Juvenile Confinement

- **Secure Custody Review Hearings**. Amended G.S. 7B-1903(c) codifies the holding of *In re D.L.H.*, 198 N.C. App. 286 (2009), and requires custody review hearings be held at least every 10 calendar days when a juvenile is placed in secure custody pending disposition or out-of-home placement, unless the juvenile waives the right to a hearing through counsel. Review hearings may be waived for no more than 30 calendar days with the juvenile's consent, and the custody order must be in writing with appropriate findings of fact.

- **Restraint of Minors Under 10**. New G.S. 7B-1903(f) prohibits the use of physical restraints to transport a juvenile under the age of 10, for an evaluation of the juvenile's need for medical or psychiatric treatment under G.S. 7B-1903(b), if the juvenile does not have a pending delinquency charge, unless "reasonably necessary for the safety of the officer, authorized person, or the juvenile."

- **Imposition of Intermittent Confinement Days**. Amended G.S. 7B-2506(12) and G.S. 7B-2506(20) require the court to determine the timing and imposition (currently, only timing) of intermittent confinement days. This change appears to codify long-standing case law stating that the court may not delegate its authority to court counselors to impose dispositional options. *See In re S.R.S.*, 180 N.C. App. 151, 158 (2006).

S.L. 2015-72 (H552): Graffiti Vandalism Offense.

- This Act creates a new statute, G.S. 14-127.1, which defines the crime of graffiti vandalism. The first offense is punishable as a Class 1 misdemeanor and carries a mandatory minimum fine of $500, and if a community or intermediate punishment is imposed, up to 24 hours of community service. The offense is elevated to a Class H felony, if the person has two or more convictions under this section, the current offense was committed after the second conviction, and the second offense was committed after the first conviction. The Act also amends G.S. 14-132(d) to clarify that the offense of defacing a public building, statue, or monument is a Class 2 misdemeanor, unless the conduct is covered by the new G.S. 14-127.1 or another provision of law

providing greater punishment. The Act becomes effective on December 1, 2015, and applies to offenses committed on or after that date.

S.L. 2015-183 (H134): **Soliciting Prostitution/Immunity for Minors.**
This Act amends G.S. 14-205.1 to prohibit the prosecution of minors for solicitation of prostitution. Instead, minors suspected of soliciting prostitution must be treated as undisciplined juveniles and taken into protective custody, pursuant to Article 19 of Chapter 7B. In 2013, a similar law was passed to make minors immune from prosecution for prostitution under G.S. 14-204 (see Session Law 2013-368).

Abuse, Neglect, Dependency, and Adoption Law

Sara DePasquale

S.L. 2015-43 (H 82): Execution/Nonsecure Custody Order/Child Abuse. Effective for all nonsecure custody orders issued on or after June 2, 2015. This act amends G.S. 7B-504 to allow the court to authorize law enforcement to enter private property to take physical custody of the child. The court must first find that a less intrusive remedy is not available, which the court may determine on the basis of the verified petition and request for nonsecure custody or the testimony of the DSS director or authorized representative. If the court finds there are exigent circumstances, the court may authorize forcible entry at any hour.

S.L. 2015-136 (H 669): Changes to Juvenile Law Pertaining to Abuse, Neglect, and Dependency There are two effective dates: Section 3, effective July 2, 2015; all other sections effective for all actions filed or pending on or after October 1, 2015. S.L. 2015-136 makes various changes to Chapter 7B, the Juvenile Code, some of which is reformatting and moving existing language and others are substantive changes.

- **Definitions**. Section 1 amends G.S. 7B-101 by repealing (2) "aggravating circumstances;" those factors are now incorporated in the new G.S. 7B-901(c)(1), and adding:
    - (8a) "Department," clarifying department means the county's child welfare agency, including a consolidated human services agency
    - (15a) Nonrelative kin (removing it from the text of G.S. 7B-505(c) and -506(h)(2a)).

- **Parties**. Section 2 creates G.S. 7B-401.1(e1), which states foster parents are not parties to an A/N/D/proceeding and do not have a right to intervene unless they meet the criteria for standing to initiate a termination of parental rights actions pursuant to G.S. 7B-1103.

- **Seeking a Nonsecure Custody Order**. Section 3 (effective July 2, 2015) amends G.S. 7B- 502 to explicitly authorize an *ex parte* initial nonsecure custody order. If nonsecure is sought during regular court business hours, the department must first notify by telephone a respondent's attorney (or an employee of the attorney's office if the attorney is unavailable) that the department will be seeking a nonsecure custody order. A respondent is represented by an attorney if: the respondent is represented by an attorney in another juvenile proceeding for a different child of the respondent's that is in the same county, or the department has been notified in writing that respondent has an attorney for the juvenile matter. Notice need not be provided to a provisional counsel who is appointed to the respondent upon the filing of the petition in that juvenile matter.

- **The Nonsecure Custody Order.** Section 7 rewrites G.S. 7B-507, repealing all subsections but (a). G.S. 7B-507 applies solely to nonsecure custody orders where custody is placed with a department. Language addressing whether reunification efforts are required or shall cease are no longer included in a nonsecure custody order.

- **Relatives: Notice and Placement Preference.** Sections 4, 8, and 9 rewrite G.S. 7B- 505(b), (c), -800.1(a)(4), and -901(b) to require the court to inquire about the department's efforts to identify and notify a child's relatives, parents, and persons who have legal custody of the child's siblings that the child has been removed from his or her home so that these relatives may be considered as resources for support and/or placement of the child. G.S. 7B-505(b) is amended to require the court when ordering nonsecure custody to also order the department to make diligent efforts to notify those persons that the child is in nonsecure custody and provide notice of continued nonsecure custody hearings, unless the court finds the notification would be contrary to the child's best interest. Sections 4 and 5 amend G.S. 7B-505(c) and -506(h)(2a) to allow the court to consider placing the child in nonsecure custody with a person who has custody of the child's sibling if the child is not placed with a relative.

- **Consent to Medical Treatment by a Department.** Section 5 creates G.S. 7B-505.1, which addresses obtaining and consenting to treatment for juveniles who are placed in nonsecure custody with the department. Section 11 creates G.S. 7B-903.1(e), which applies G.S. 7B-505.1 to a department who has a child in its custody at disposition (after adjudication). A department may consent to routine and emergency medical care and in exigent circumstances, testing and evaluation of a child in its custody. At initial nonsecure custody, a department may consent to a Child Medical Evaluation (CME) only after the court authorizes it to do so upon making written findings that demonstrate a compelling interest for not waiting until the hearing on continued nonsecure custody. The department must obtain parental consent (or consent from the child's guardian or custodian) for all other treatment for the child unless the court orders after a hearing that the department may consent. In making its order, the court must find by clear and convincing evidence that the care, treatment, or evaluation requested is in the best interests of the child. For any treatment that is provided to the child, the department must make reasonable efforts to notify the parent, guardian, or custodian, give frequent status reports, and upon request, make available results or records unless disclosure is prohibited by G.S. 122C-53(d). Disclosure of the results of a CME is governed by G.S. 7B-700 (information sharing and discovery). A department may share confidential information with a health care provider unless disclosure is prohibited by federal law. A health care provider must disclose confidential information to a department with custody of a child and the child's parent, guardian, or custodian, unless the disclosure is prohibited by federal law or a court order.

- **Initial Disposition.** Section 9 amends G.S. 7B-901 to specifically apply to the first dispositional hearing (post adjudication) and creates subsections to G.S. 7B-901. Subsection (c) requires the court order that reunification efforts are not required when the court makes written findings of any of the enumerated criteria set forth in G.S. 7B- 901(c)(1) – (3). This is the same criteria found at G.S. 7B-507(b), which has been repealed by Section 7. New criteria to determine reunification efforts are not required include: chronic emotional abuse and chronic or toxic exposure to alcohol or controlled substances that causes the child to be impaired or addicted. Section 9 also repeals the requirement that when considering if the court will close the initial dispositional hearing, it

must keep the hearing open to the public if the juvenile requests that it be an open hearing. However, this language remains in G.S. 7B-801(a) and (b), and applies to any hearing authorized by Subchapter I.

- **Dispositional Alternatives.** Section 10 reformats G.S. 7B-903 and removes the language regarding medical care. It adds the appointment of a G.S. 7B-600 guardian for the child as a dispositional option. It requires the court when ordering a child in out-of-home care to make findings that continuing or returning to the child's home is contrary to the child's health and safety and whether the department has made reasonable efforts to prevent the need for the child's placement.

- **Decision-Making for a Child in Department Custody**. Section 11 creates G.S. 7B-903.1. When a child is in the department's custody, the department may make decisions that are generally made by a child's custodian. The court may delegate any part of the department's authority to make decisions to the child's parent, foster parent, or other person. Unless the court determines it is not in the child's best interests and orders otherwise, the child's placement provider may give or withhold permission for a child to participate in "normal childhood activities" without first seeking approval from the court or department.

- **Reunification, Reasonable Efforts, Concurrent Permanency Planning.** Sections 7 and 10 rewrite G.S. 7B-507 and -901 to repeal the language regarding reunification efforts from G.S. 7B-507 and add language regarding reunification efforts to G.S. 7B-901. Findings regarding reunification and reasonable efforts start at disposition. Reunification efforts are not required if the court makes findings of any factor set forth in the amended G.S. 7B-901(c)(1)-(3). Section 14 creates G.S. 7B-906.2, which requires the court to adopt one or more concurrent permanent plans that are in the best interests of the child. Although "one or more" is stated in subsection (a), G.S. 7B-906.2(b) and (c) require the court to identify a primary and secondary permanent plan (at least two plans). One of those plans must be reunification unless the court finds reunification was never required (see G.S. 7B-901(c)) or makes written findings that reunification efforts clearly would be unsuccessful or inconsistent with the child's health and safety. Section 16 amends G.S. 7B-1001(a)(5) to allow an appeal of an order that eliminates reunification as a permanent plan. G.S. 7B-906.2 requires the court to order the department to make efforts toward finalizing the concurrent permanency plans and may specify efforts that are reasonable. The court must make several different findings required by G.S. 7B- 906.2, including whether the reunification efforts made by the department for each of the concurrent plans were reasonable to timely achieve permanence for the child, whether the parent is participating in and cooperating with the plan, making adequate progress within a reasonable period of time, and making him/herself available to the court, department, and child's GAL, and if the child is 14 or older, findings required by G.S. 7B-912. Section 13 adds to G.S. 7B-906.1(g) that at the conclusion of each permanency planning hearing, "the judge" must inform the parent, guardian, or custodian that failure or refusal to cooperate with the plan may result in an order that reunification efforts may cease.

- **Children 14 and older.** Section 15 creates G.S. 7B-912, which addresses children 14 and older. At every permanency planning hearing where the child is 14 or older and in a department's custody, the court must inquire about and make findings for each of the three statutory criteria that addresses a teen's transition to adulthood. At least 90 days before a teen turns 18, the court must inquire as to whether that teen received copies of certain documents (i.e., birth certificate, social security and health insurance cards, medical records, etc.) and identify an individual to assist the teen in obtaining those documents before the teen turns 18 if the documents have not been provided.

- **Another Planned Permanent Living Arrangement (APPLA)**. Section 15 creates G.S. 7B-912, and subsections (c) and (d) address APPLA for a teen who is 16 or 17 years old. APPLA may become a 16 or 17 year old's primary permanent plan if the court finds each of the factors enumerated at G.S. 7B-912(c)(1)-(4): the teen's age, that the department made diligent efforts to place the teen permanently with a parent or in a guardianship or adoptive placement, compelling reasons exist that it is not in the teen's best interest to be placed permanently with a parent or in a guardianship or adoptive placement, and APPLA is the best permanent plan. The court must also question the teen and make written findings of the teen's desired permanent outcome.

S.L. 2015-135 (S 423): Foster Care Family Act. Parts II and IV become effective on October 1, 2015 and are made to comply with changes to federal law made by the "Preventing Sex Trafficking and Strengthening Families Act" (P.L. 113-183)

- **Reasonable and Prudent Parenting Standard**. Part II, Section 2.1 creates G.S. 131D- 10.2A, which creates the "reasonable and prudent parent standard" to be used for foster children. Section 2.5 creates G.S. 7B-903.1, which applies the reasonable and prudent parental standard when deciding if a child will participate in "normal childhood activities" to G.S. Chapter 7B. The standard considers the child's health, safety, best interest, and emotional and developmental growth, when deciding if a child will participate in extracurricular, enrichment, or social activities. It must be used by the department, foster parent, and/or child caring institution. Unless there is a court order to the contrary, a foster child's caregiver may allow a child to engage in "normal childhood activities," such as a sleepover outside of the caregiver's residence for periods of 24 to 72 hours, without first obtaining court or department approval. A caregiver is not liable for a child's injuries that result from the caregiver deciding in accordance with the standard unless those injuries were caused by gross negligence, intentional wrongdoing, willful and wonton misconduct, or operation of a motor vehicle. A caregiver may be liable for an act or omission of the child if the caregiver failed to act in accordance with this standard.

- **Liability Insurance for Foster Parents.** Effective July 2 ,2015, Part III adds G.S. 58-36-44, which requires the Rate Bureau to develop an optional liability insurance policy for licensed foster parents for acts or omissions of the foster parent to be filed with the Commission for

approval no later than May 1, 2016.

- **Driving Privileges.** Part IV, Section 4.2 amends G.S. 20-a(i) to allow a teen in the legal custody of a department to have an application for a driver's permit or license be signed by the teen and the teen's GAL, county department director or designee, or the court. Section 4.1 creates G.S. 48A-4, which allows a 16 or 17 year old who is in the legal custody of a county department to contract for his or her own car insurance, with the consent of the court. The teen is responsible for payment of the premium and any damages caused by the teen's negligent operation of the vehicle. Section 4.3 adds subsection (a2) to G.S. 20-309, which allows a foster parent to exclude from endorsement of his or her insurance a foster child residing the household upon proof of the foster youth's own insurance.

- **Notice to Relatives** (also included in S.L. 2015-136). Part II, Sections 2.2, 2.3, and 2.4 amend G.S. 7B-505(b), -800.1(a)(4), and -901 requiring the court to inquire and order the department to make diligent efforts to notify the child's relatives and other persons with legal custody of the child's siblings that the child is in nonsecure custody and to determine if these persons are a resource for placement and/or support of the child.

- **Children 14 and older** (also included in S.L. 2015-136). Part II, Section 2.6 creates G.S. 7B-912, which addresses children 14 and older. At every permanency planning hearing where the child is 14 or older and in a department's custody, the court must inquire about and make findings for each of the three statutory criteria that addresses a teen's transition to adulthood. At least 90 days before a teen turns 18, the court must inquire as to whether that teen received copies of certain documents (i.e., birth certificate, social security and health insurance cards, medical records, etc.) and identify an individual to assist the teen in obtaining those documents before the teen turns 18 if the documents have not been provided. If a teen is 16 or 17 years old, Another Planned Permanent Living Arrangement (APPLA) may be ordered if the court finds each of the criteria set forth at G.S. 7B-912(c)(1)-(4) and (d). The court is required to question the teen and include written findings of the teen's desired permanent outcome.

S.L. 2015-241 (H 97): Appropriations Act of 2015. Subpart XII, Part C addresses the Department of Health and Human Services Division of Social Services.

- **Extends Foster Care to Age 21**. Effective January 1, 2017, Sections 12.C.9.(a), (c), (d), (e), (f), (g), & (h), found at pages 153-156 of the pdf version, amend various statutes to extend foster care for a youth up to age 21 (from 18). G.S. 108A-48 is amended to authorize foster care services and benefits to continue for a youth up to age 21 if the young adult meets one of five designated criteria: 1) completing high school or its equivalent, 2) enrolled in a postsecondary or vocational program, 3) participating in a program or activity designed to promote employment, 4) works at least 80 hours a month, or 5) has a medical condition or disability that prevents him or her from completing the educational or employment requirements. The young adult may live in a collage dormitory or other semi-supervised housing arranged for by the county department.

The young adult will receive monthly supervision. G.S. 131D-10.2B is created to allow a youth who ages out of foster care at 18 years old to opt in for foster care services until age 21, even if the youth initially opted out of extended foster care services. G.S. 7B-910.1 is added to require the court to review the voluntary placement agreement entered into by the young adult and county department within 90 days of the execution of the agreement. Additional hearings may be requested by the young adult or county department. The young adult will not be represented by a GAL. G.S. 7B-401.1 is amended to add subsection (i), a young adult in foster care, in the list of parties to an abuse, neglect, and dependency proceeding. G.S. 108A-49.1 is amended to reflect foster care payments may extend up to age 21.

- **Adoption Assistance Payments Extended to Age 21**. Effective January 1, 2017, Section 12.C.9.(b), found at page 154 of the pdf version, amends G.S. 180A-49 by adding subsection (e), which authorizes adoption assistance payments up to age 21 if the teen was adopted at 16 or 17 years old.

- **Guardianship Assistance Payments (GAP) Extended to Age 21**. Section 12C.4, found at page 150 of the pdf version, allows the Division of Social Services to provide for GAP payments up to young adult's 21st birthday if the young adult opted in to extended foster care. The Social Services Board must adopt Rules to implement this program, including defining "legal guardian" for a young adult in foster care.

- **Development of Plan to Extend Foster Care.** Sections 12.C.9.(i), found at page 156 of the pdf version, requires the Department of Health and Human Services to develop a plan to expand foster care services for youth choosing to continue to receive such services until their 21st birthday. The plan must be reported to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division by March 1, 2016 and on the plan's implementation by March 1, 2017.

S.L. 2015-181 **(H 383): Clarify Statutory Scheme for Sex Offenses**. Effective December 1, 2015 for criminal offenses committed on or after that date, this law renumbers and renames rape and sexual offense statutes. There are six statutory sex offenses: G.S. 14-27.23 (statutory rape of a child by an adult), 14-27.24 (first-degree statutory rape), 14-27.25 (statutory rape of person who is 15 years of age or younger), 14.2-7.28 (statutory sexual offense with a child by an adult), 14-27.29 (first-degree statutory sexual offense), and 14-27.30 (statutory sexual offense with a person who is 15 years of age or younger). The new statutory names and numbers are reflected in amendments to various statutes that references these crimes, including but not limited to: G.S. 7B-101(1) definition of abuse and G.S. 7B-401.1(b)(3), 7B-1103(c), 48-3-609(a)(9), 50-13.1(a) impact on rights of parents convicted of certain crimes when crime resulted in child's conception.

S.L. 2015-123 **(S 578): Transition Abuse and Neglect Investigations in Child Care Facilities to Department of Health and Human Services.** Effective January 1, 2016, this law removes investigations of suspected child abuse and neglect that is believed to have occurred in a child care institution from a county department of social services and to the Division of Child Development and Early Education at

the NC Department of Health and Human Services (DHHS) and makes changes to both G.S. Chapters 7B and 110. Sections 1 through 5 repeal any language that references child care facilities in G.S. Chapter 7B, including removing from the definition of "caretaker" any person who has responsibility for the care of a child in a child care facility.

- **Reporting Suspected Abuse or Neglect of a Child in Child Care Facility**. Section 8 creates G.S. 110-105.4, which requires any person who has cause to suspect a child has been maltreated or has died in a child care facility to make a report to the NC DHHS (and not the county department). The report should include the name and address of the child care facility, the name and age of the child, the names of the child's parents, guardians, or caretakers, the child's present whereabouts, and the nature and extent of the child's injuries or conditions caused by the maltreatment. The report may be anonymous. If sexual abuse is alleged or discovered during the assessment, NC DHHS must notify the State Bureau of Investigations (SBI). NC DHHS must make a report to the county department if it determines a report is required by G.S. 7B-301.

- **Assessment**. Section 8 creates G.S. 110-105.3, which authorizes investigations of child maltreatment in child care facilities to NC DHHS but requires cooperation with local departments of social services, local law enforcement, and medical personnel to ensure reports are properly investigated. NC DHHS must contact local law enforcement to investigate reports meeting the criteria for misdemeanor or felony child abuse. During an investigation, NC DHHS may issue a protection plan and/or immediate corrective action and seek additional administrative remedies. Confidentiality provisions apply with enumerated exceptions. The new G.S. 110-105.6 establishes penalties for child maltreatment.

- **Child Maltreatment Registry**. Section 8 creates G.S. 110-105.5, which requires NC DHHS to establish and maintain a Child Maltreatment Registry (CMR). The CMR will contain the names of caregivers confirmed by NC DHHS to have maltreated a child in the child care facility, after the individual has a right to challenge his or her placement on the registry through an administrative hearing. A licensed or religious-sponsored child care facility may access the CMR to screen potential applicants. No individual on the CMR may be a caregiver in a licensed or religious-sponsored child care facility. NC DHHS may provide information from the CMR to child placing agencies, foster care providers, and adoption service providers when determining an individual's fitness to care for or adopt a child.

S.L.2015-54 (H 293). Various Changes to the Adoption Laws. Effective June 4, 2015.

- **Hague Intercountry Adoption Convention**. Section 1 creates G.S. 48-1-108A, which states that if an adoptee is subject to the Hague Adoption Convention, the Convention controls the adoption.

- **Interstate Jurisdiction Issues**: Section 3 amends G.S. 48-2-100(c) to allow the NC court to

assume jurisdiction of an adoption action when another state that was exercising jurisdiction in substantial conformity with the UCCJEA dismisses its action or relinquishes jurisdiction to NC prior to the adoption decree being granted.

- **Pre-Birth Determination of Right to Consent.** Section 4 changes the time periods found at G.S. 48-2-206. A mother may file a special proceeding at any time after approximately 3 months from time of conception (it had been 6 months) to determine if a biological father's consent is required. The father's time to respond is increased to 30 days (from 15) after service.

- **Service by Publication**. Sections 5 and 8 amend G.S. 48-2-401(f) and 48-3-603(a)(7) to require an individual to file a response to a notice of adoption within 40 days from when the notice is first published.

- **Minor Parent**. Section 9 amends G.S. 48-3-605(b) to address how a minor parent who consents to his or her child's adoption may prove his or her identity.

S.L. 2015-264 (S 119): Technical Corrections. Effective October 1, 2015, Section 44, found at pages 18-19 of the pdf version, amends G.S. 48-3-605 to add subsection (g), which gives the clerk of superior court, the superior court, and district court jurisdiction to accept voluntary consents for adoption under the Indian Child Welfare Act (ICWA) or the laws of other states, and to determine whether good cause exists to deviate from adoptive placement preferences under ICWA. The new subsection is referenced in G.S. 48-3-702(b) regarding relinquishments.