

2011 LEGISLATION OF INTEREST TO COURT OFFICIALS

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Criminal Law & Procedure

- 1. [S.L. 2011-2](#) (H 18): Clarification of effective date of law authorizing restoration of firearms rights.** The act amends the effective date of [S.L. 2010-108](#) (H 126), which allows people convicted of nonviolent felonies to apply for restoration of the right to possess firearms and creates an exception from firearms restrictions for white collar felony convictions. See John Rubin & Jim Drennan, [2010 Legislation Affecting Criminal Law and Procedure](#) (Aug. 2010). The 2010 act contained a standard effective-date clause used in criminal law legislation—that is, the act applied to offenses committed on or after a particular date, in this instance February 1, 2011. This wording created some question about whether the restoration procedure and exception applied to a person who committed an offense before that date. The 2011 amendment clarifies that the restoration procedure and exception takes effect February 1, 2011. Thus, whether the offense date is before or after February 1, a person is eligible for restoration of firearm rights if he or she was convicted of a nonviolent felony as defined in G.S. 14-415.4, completed his or her sentence at least twenty years ago, and otherwise meets the requirements for restoration. The act is effective March 5, 2011.
- 2. [S.L. 2011-6](#) (H 3): Good faith exception to exclusionary rule for violations of state law.** Effective for trials and hearings commencing on or after July 1, 2011, the act amends G.S. 15A-974 to provide a good-faith exception to the exclusionary rule for violations of Chapter 15A of the North Carolina General Statutes. G.S. 15A-974 has provided that evidence must be suppressed if it is obtained as result of a substantial violation of Chapter 15A. The amended statute states that evidence shall not be suppressed for such a violation if the

person committing the violation acted under the “objectively reasonable, good faith belief” that the actions were lawful. Amended G.S. 15A-974 requires the court, in determining whether evidence must be suppressed for a violation of the U.S. Constitution, N.C. Constitution, or Chapter 15A, to make findings of fact and conclusions of law.

In a section of the act not incorporated into the General Statutes, the General Assembly also requested that the N.C. Supreme Court reconsider and overrule its decision in *State v. Carter*, 322 N.C. 709 (1988). In that decision, our court held that the good faith exception to the exclusionary rule adopted by the U.S. Supreme Court for certain constitutional violations does not exist under our state constitution.

For a more detailed analysis of both the act’s application to violations of G.S. Chapter 15A and the scope of the good-faith exception to the exclusionary rule for constitutional violations, see Bob Farb, [New North Carolina Legislation on Good Faith Exception to Exclusionary Rules](#), posting to North Carolina Criminal Law: UNC School of Government Blog (Mar. 23, 2011).

3. **S.L. 2011-12 (S 7): New controlled substance offenses.** Effective for offenses committed on or after June 1, 2011 (note that the effective date is earlier than the customary December 1 effective date for new offenses), the act adds four substances to the controlled substance schedules and creates new controlled substance offenses based on those substances, including trafficking offenses.

Additional controlled substances. Amended G.S. 90-89(5) includes three new substances as Schedule I controlled substances, which generally carry the most serious criminal penalties: 4-methylmethcathinone (also known as mephedrone); 3,4-Methylenedioxypropylvalerone (also known as MDPV); and a compound, other than bupropion, that is structurally derived from 2-amino-1-phenyl-1-propanone by modification in one of the specified ways. Amended G.S. 90-94 adds synthetic cannabinoids (as defined in new subsection (3) of G.S. 90-94) as a Schedule VI controlled substance.

New controlled substance offenses. Possession of any Schedule I controlled substance, including the above-described controlled substances, remains a Class I felony under G.S. 90-95(a)(3) and 90-95(d)(1), except that possession of one gram or less of MDPV is a Class 1 misdemeanor. Possession of synthetic cannabinoids *or* any mixture containing that substance are classified as follows under G.S. 90-95(a)(3) and 90-95(d)(4): a Class 3 misdemeanor for seven grams or less; a Class 1 misdemeanor for more than seven and up to 21 grams or less; and a Class I felony for more than 21 grams. Under G.S. 90-95(a)(1) and 90-95(b)(2), sale of synthetic cannabinoids is a Class H felony, and manufacture, delivery, or possession with intent to manufacture, sell, or deliver synthetic cannabinoids is a Class I felony, except the transfer of less than 2.5 grams of that substance *or* any mixture containing that substance for no remuneration does not constitute delivery.

New trafficking offenses. New G.S. 90-95(h)(3d) creates the offense of trafficking in MDPV, classified and punishable as follows: for 28 or more and less than 200 grams, a Class F felony with a mandatory prison term of 70 to 84 months and a minimum \$50,000 fine; for 200 or more and less than 400 grams, a Class E felony with a mandatory prison term of 90 to 117 months and a minimum \$100,000 fine; and for 400 grams or more, a Class C felony with a mandatory prison term of 225 to 279 months and a minimum \$250,000 fine. New G.S. 90-95(h)(3e) creates the offense of trafficking in mephedrone, with the same classes and punishments for the same quantities as for MDPV. New G.S. 90-95(h)(1a) creates the offense of trafficking in synthetic cannabinoids, classified and punishable as follows based on dosage units (defined as three grams of the substance *or* any mixture of the substance):

for more than 50 and less than 250 dosage units, a Class H felony with a mandatory prison term of 25 to 30 months and a minimum \$5,000 fine; for 250 or more and less than 1250 dosage units, a Class G felony with a mandatory prison term of 35 to 42 months and a minimum \$25,000 fine; for 1250 or more dosage units and less than 3750 dosage units, a Class F felony with a mandatory prison term of 70 to 84 months and a minimum \$50,000 fine; and for more than 3750 dosage units, a Class D felony with a mandatory prison term of 175 to 219 months and a minimum \$200,000 fine.

4. **S.L. 2011-19 (H 27), as amended by S.L. 2011-307 (S 684): SBI crime lab and related changes.** Effective March 31, 2011 except as noted below, the act adds and modifies several statutes regarding the State Bureau of Investigation (SBI) Laboratory and forensic testing. The laboratory remains a part of the SBI, but it is renamed the State Crime Laboratory (State Crime Lab) and G.S. 114-16 is revised to direct the SBI to employ a sufficient number of skilled people to render a reasonable service to the “public and criminal justice system” (was, “prosecuting officers of the State”).

Advisory board. New G.S. 114-16.1 establishes a sixteen-member North Carolina Forensic Science Advisory Board within the Department of Justice, which consists of the State Crime Lab Director and fifteen members appointed by the Attorney General. The appointments must conform to the requirements in the new statute—for example, one member must be the Chief Medical Examiner, another must be a scientist with an advanced degree and experience in forensic chemistry, and the like. The new advisory board may review State Crime Lab operations, make recommendations and, on request of the Lab Director, review analytical work, reports, and conclusions of scientists employed by the Lab. This last category of review is confidential as provided in new G.S. 114-16.1(f).

Studies and protocols on bias and error. An uncodified section of the act (that is, a provision that will not appear in the General Statutes but still has the force of law) directs the SBI to seek collaborative opportunities and grant funds for research programs on human observer bias and sources of human error in forensic examinations and directs the State Crime Lab to develop standard operating procedures to minimize potential bias and human error.

Professional certification. An uncodified section of the act requires forensic science professionals at the State Crime Lab to obtain individual certification consistent with international and ISO standards within 18 months of the date the analyst become eligible to seek certification according to the standards of the certifying entity or by June 1, 2012, whichever occurs later, unless no certification is available. (The 18-month alternative was added by S.L. 2011-307.)

Ombudsman. An uncodified section of the act, effective July 11, 2011, creates the position of ombudsman in the State Crime Lab within the North Carolina Department of Justice. The act states that the primary purpose of the position is to work with defense counsel, prosecutorial agencies, criminal justice system stakeholders, law enforcement officers, and the general public to ensure that State Crime Lab practices and procedures are consistent with state and federal law, best forensic practices, and the interests of justice. The ombudsman must mediate complaints between the SBI and others and regularly attend meetings of the district attorneys, district and superior court judges, public defenders, Advocates for Justice, and Bar criminal law sections.

Admissibility of forensic analysis and chemical analysis of blood or urine. G.S. 8-58.20 has allowed a lab report of a written forensic analysis to be admitted without the testimony of the analyst if certain procedures are followed. The act amends the statute to add that for

a forensic analysis to be admissible under that statute, it must be performed by a lab that is accredited as specified in the amended statute. The act makes similar changes to G.S. 20-139.1(c2) on the admissibility of a chemical analysis of blood or urine without the testimony of the analyst. As amended by S.L. 2011-307, these requirements apply only to the State Crime Lab beginning March 31, 2011, and to other laboratories conducting forensic or chemical analysis beginning October 1, 2012.

Discovery. Amended G.S. 15A-903(a)(1), which requires the State to make available to the defendant its complete files as defined in the statute, states that “[w]hen any matter or evidence is submitted for testing or examination, in addition to any test or examination results, all other data, calculations, or writings of any kind shall be made available to the defendant, including, but not limited to, preliminary test or screening results and bench notes.” Amended G.S. 15A-903(c) requires all public and private entities that obtain information related to the investigation of the crimes committed or the prosecution of the defendant to disclose such information to the referring prosecutorial agency for disclosure to the defendant. New G.S. 15A-903(d) makes it a Class H felony for a person to willfully omit or misrepresent evidence or information required to be disclosed under G.S. 15A-903(a)(1) or required to be provided to the State under G.S. 15A-903(c); and makes it a Class 1 misdemeanor to willfully omit or misrepresent evidence or information required to be disclosed pursuant to any other provision of “this section” (meaning G.S. 15A-903).

5. **S.L. 2011-21 (S 20): Proprietary schools.** Effective July 1, 2011, the act amends several provisions regulating proprietary schools, including the definition of proprietary schools in G.S. 115D-87. Amended G.S. 115D-96 continues to make it a Class 3 misdemeanor to operate a proprietary school, under the amended definition, without a license or bond.
6. **S.L. 2011-22 (H 29): Retrieval of killed or wounded big game animal.** Effective October 1, 2011, the act amends G.S. 113-291.1, which regulates the taking of wild animals and birds, to permit the retrieval of a killed or wounded big game animal if done with (1) a portable light source, (2) a single dog on a leash, (3) a .22 caliber rimfire pistol, archery equipment, or handgun otherwise lawful for that hunting season, (4) from one-half hour after sunset until 11 p.m. if necessary, and (5) without use of a motorized vehicle.
7. **S.L. 2011-29 (S 248): Update of archaic disability language.** Effective April 7, 2011, the act updates several provisions to update language describing disabilities (for example, the term “incompetent person” replaces “lunatic,” a person “unable to speak” replaces “dumb,” and “physically disabled” replaces “physically defective”). Affected provisions that involve criminal law and procedure are North Carolina Rule of Evidence 601 (competency of witnesses) and G.S. 14-113 (obtaining money by false representation of physical disability).
8. **S.L. 2011-37 (H 59): No EMS credentials for sex offenders.** Effective April 12, 2011, the act adds G.S. 131E-159(h) providing that a person who is required to register as a sex offender under G.S. Chapter 14, Article 27A, may not be granted emergency medical services (EMS) credentials. The new statute does not require revocation of credentials for a person who currently has them, but it prohibits renewal of credentials. The new statute states that it applies to a person required to register and to a person “who was convicted of an offense which would have required registration if committed at a time when such registration would have been required by law.”

9. **S.L. 2011-42 (H 234): Prospective jurors who are hearing-impaired or have other disabilities.** See Judicial Authority & Administration, below.
10. **S.L. 2011-56 (S 406): Repeal of requirement of permit for crossbow.** Effective April 28, 2011, the act revises G.S. 14-402 to eliminate the prohibition on selling, giving away, transferring, purchasing, or receiving a crossbow without a permit. The act also repeals G.S. 14-406.1, which set forth the procedure for manufacturers, wholesale dealers, and retailers to obtain a permit for the purchase and receipt of crossbows. The act does not change the permit requirements and procedures for pistols, contained in Article 52A of G.S. Ch. 14.
11. **S.L. 2011-60 (H 215): “The Unborn Victims of Violence Act/Ethen’s Law.”** Effective for offenses committed on or after December 1, 2011, the act adds a new Article 6A, “Unborn Victims” (G.S. 14-23.1 through 14-23.8) to G.S. Chapter 14, creating several new criminal offenses. The act repeals G.S. 14-18.2 (injury to pregnant woman). An “unborn child” is defined in new G.S. 14-23.1 as “a member of the species homo sapiens, at any stage of development, who is carried in the womb.”
- New G.S. 14-23.2 creates the offense of “murder of an unborn child,” which can be committed in three ways. A person who unlawfully causes the death of an unborn child is guilty of a Class A felony, punishable by life without parole, if the person willfully and maliciously commits an act with the intent to cause the death of the unborn child or causes the death of the unborn child in the perpetration or attempted perpetration of any criminal offense in G.S. 14-17. A person who unlawfully causes the death of an unborn child is guilty of an offense subject to the same punishment as second-degree murder if the person commits an act causing the death of the unborn child that is inherently dangerous to human life and is done so recklessly and wantonly that it reflects disregard of life. Under new G.S. 14-23.3, a person commits the offense of “voluntary manslaughter of an unborn child,” a Class D felony, if the person unlawfully causes the death of an unborn child by an act that would be voluntary manslaughter if it resulted in the death of the mother. Under new G.S. 14-23.4, a person commits the offense of “involuntary manslaughter of an unborn child,” a Class F felony, if the person unlawfully causes the death of an unborn child by an act that would be involuntary manslaughter if it resulted in the death of the mother. Under new G.S. 14-23.5, a person commits the offense of “assault inflicting serious bodily injury on an unborn child,” a Class F felony, if the person commits a battery on the mother of the unborn child and the child is subsequently born alive and, as a result of the battery, suffered serious bodily injury as defined in new G.S. 14-23.5(b). Under new G.S. 14-23.6, a person commits the offense of “battery on an unborn child,” a Class A1 misdemeanor and a lesser-included offense of G.S. 14-23.5, if the person commits a battery on a pregnant woman.
- The above statutes state that each of these offenses is a separate offense. An uncodified provision in the act states that a prosecution for or conviction under the act is not a bar to conviction of or punishment for any other crime committed by the defendant as part of the same conduct. New G.S. 14-23.8 states that except for an offense under G.S. 14-23.2(a)(1), which requires an intent to cause the death of the unborn child, an offense under the new article does not require proof that the defendant knew or should have known “that the victim of the underlying offense was pregnant” or that the defendant intended to cause “the death of, or bodily injury, to the unborn child.”
- New G.S. 14-23.7, “Exceptions,” states that the new article shall not be construed to permit prosecution of: a lawful abortion pursuant to G.S. 14-45.1; diagnostic testing or therapeutic treatment pursuant to usual and customary standards of medical practice; and

acts by a pregnant woman, including acts resulting in a miscarriage or stillbirth as defined in new G.S. 14-23.7(3)a. and b. An uncodified provision in the act states that it shall not be construed to impose criminal liability on an expectant mother who is the victim of acts of domestic violence, as defined in G.S. Chapter 50B, that cause injury or death to her unborn child.

The act contains a severability clause, providing that a finding of invalidity of any provision in the act does not affect other provisions or applications of the act that can be given effect without the invalid provision or application.

For additional discussion of this act, see Jessica Smith, [New Crimes Protecting Unborn Children](#), posting to North Carolina Criminal Law: UNC School of Government Blog (July 18, 2011).

12. [S.L. 2011-61 \(H 219\)](#): Name change by sex offender; venue for petition to terminate registration. The act amends several statutes to track name changes by people required to register as sex offenders. On the initial registration form, a registrant must indicate his or her name and any aliases at the time of conviction. See G.S. 14-208.7(b)(1a). A registrant who changes his or her name must report the change to the registering sheriff within three business days of the change. See G.S. 14-208.9. And, when periodically re-verifying his or her registration information, a registrant must indicate any name change. See G.S. 14-208.9A(a)(3)c. New G.S. 14-208.14(4a) requires the Division of Criminal Statistics to maintain its public database so as to allow access to a registrant's name, any aliases, and any legal name changes. These provisions apply to any person who continues to be required to register on or after December 1, 2011, whether the person's registration obligation begins before or after that date; however, a registrant is not in violation of the new requirements if the person provides the required information at the first required verification on or after December 1, 2011. Effective May 3, 2011, the act also revises G.S. 101-5 to state explicitly that the clerk of court may not grant a name change to a person required to register as a sex offender. (In 2008, the General Assembly enacted G.S. 14-202.6 and G.S. 101.6(c) to prohibit a person required to register as a sex offender from obtaining a name change under G.S. Chapter 101. See G.S. 14-202.6, 101-6(c); see also John Rubin, [2008 Legislation Affecting Criminal Law and Procedure](#), ADMINISTRATION OF JUSTICE BULLETIN No. 2008/06, at p. 10 (Nov. 2008).)

Effective for petitions filed on or after December 1, 2011, the act revises G.S. 14-208.12A(a) on the venue for the filing of a petition to terminate registration requirements. If the reportable conviction is for an offense that occurred in North Carolina, the petition is to be filed in the district where the person was convicted of the offense. If the reportable conviction is for an offense that occurred in another state, the petition is to be filed in the district where the person resides; for out-of-state convictions, the petitioner also must notify the sheriff of the county of conviction of the petition and include an affidavit attesting to such notice and containing the mailing address and contact information of the sheriff.

13. [S.L. 2011-62 \(H 270\)](#), as amended by [S.L. 2011-412 \(H 335\)](#): Changes to conditions of probation and repeal of tolling provision. The act makes the following changes to regular conditions of probation under G.S. 15A-1343(b). Per the amendments in S.L. 2011-412, the following changes apply to offenses committed on or after December 1, 2011:

- The act deleted the requirement in G.S. 15A-1343(b)(2) that the probationer remain within the jurisdiction of the court and replaces it with a requirement that the

probationer remain accessible to the probation officer by making his or her whereabouts known to the officer and not leaving the county of residence or the State of North Carolina without written permission by the court or probation officer. This part of the act was repealed by S.L. 2011-412, discussed further below.

- It repeals G.S. 15A-1343(b)(11), which provided that “[a]t a time to be designated by the probation officer, visit with his probation officer [at] a facility maintained by the Division of Prisons.”
- It revises G.S. 15A-1343(b)(13), which deals with warrantless searches, to eliminate reference to drug testing, and adds G.S. 15A-1343(b)(16), which requires the probationer to supply a breath, urine, or blood specimen for analysis of the possible presence of prohibited drugs or alcohol when requested by his or her probation officer for purposes directly related to the probation supervision. The new subdivision also provides that the probationer may be required to reimburse the Department of Correction for the costs of a positive test.

The act also authorizes additional special conditions of probation, effective for offenses committed on or after December 1, 2011. New G.S. 15A-1343(b1)(9b) authorizes conditions that prohibit street gang activity; new G.S. 15A-1343(b1)(9c) authorizes a condition allowing the probation officer to require the probationer to participate in Project Safe Neighborhood activities.

Last, the act repeals G.S. 15A-1344(g), which was enacted in 2009 and addressed the tolling of probation if a probationer is charged with new crimes. See Jamie Markham, [Summary and Analysis of Session Law 2009-373 \(S 920\): Probation Reform](#) at p. 8 (Aug. 4, 2009). With the repeal of G.S. 15A-1344(g) this legislative session, and the deletion in 2009 of any reference to tolling in G.S. 15A-1344(d), the probation statutes no longer contain any tolling provision for probationers charged with new crimes. Thus, the period of probation continues to run during the pendency of new criminal charges. The act applies to people placed on probation on or after December 1, 2011; this effective date was not amended by S.L. 2011-412. Therefore, people placed on probation before then would appear to be subject to the current tolling procedures in G.S. 15A-1344(g) for any new criminal charges during the period of their probation.

For a further discussion of this act, see Jamie Markham, [Probation Tolling Repealed](#), posting to North Carolina Criminal Law: UNC School of Government Blog (May 31, 2011).

14. **[S.L. 2011-63 \(H 316\): Jurisdiction of General Assembly special police.](#)** Effective May 3, 2011, the act amends G.S. 120-32.2 to give General Assembly special police additional statewide powers. For example, the amended statute authorizes them to conduct a criminal investigation throughout the state of a threat of physical violence against the General Assembly, a member or staff of the General Assembly, or their immediate family. The amended statute, along with amended G.S. 120-19.2(d), also gives General Assembly special police statewide jurisdiction to serve a subpoena issued by the General Assembly or committee of the General Assembly.
15. **[S.L. 2011-64 \(S 49\): Increased penalty for speeding in school zone.](#)** See Motor Vehicle Law, below.
16. **[S.L. 2011-68 \(H 407\): Elimination of safety helmet requirement for off-road ATV use.](#)** See Motor Vehicle Law, below.

17. [S.L. 2011-95](#) (H 222): **Electric vehicles in carpool lanes.** See Motor Vehicle Law, below.
18. [S.L. 2011-100](#) (H 280): **County law enforcement service district.** Effective May 31, 2011, the act amends G.S. 153A-301(a)(10) to authorize a board of county commissioners to establish a law enforcement service district if the population of the county is 900,000 or more (was, 500,000), less than 10% of the population of the county is in an unincorporated area, and the county has interlocal agreements with the municipalities in the county for the provision of law enforcement services in the unincorporated areas of the county. This statute has allowed for a single police department in Mecklenburg County to cover the county and the city of Charlotte. The changes in the population requirements continue to limit application of the statute to Mecklenburg County.
19. [S.L. 2011-119](#) (S 16): **Misdemeanor death by vehicle made an implied consent offense; mandatory blood tests in certain circumstances.** See Motor Vehicle Law, below.
20. [S.L. 2011-145](#) (H 200), as amended by [S.L. 2011-192](#) (H 642) and [S.L. 2011-391](#) (H 22): **2011 Appropriations Act.** The 2011 Appropriations Act addresses several financial and organizational matters for law enforcement, the court system, and corrections. Below is a brief rundown. All references are to S.L. 2011-145 and sections within it unless otherwise noted. The discussion below does not review the funding and personnel cuts made by the General Assembly. For a breakdown of the cuts, see Justice and Public Safety, Section I, of the [Report on the Continuation, Expansion and Capital Budgets \(Senate Appropriations Committee\)](#) (June 16, 2011).

Crimes

- *Removal of signs about water quality in coastal recreation waters.* Effective for offenses committed on or after July 1, 2011, amended G.S. 113-221.3(c) makes it a Class 1 misdemeanor to remove, destroy, damage, deface, mutilate, or otherwise interfere with any sign posted by the Department of Environment and Natural Resources pursuant to subsection (b) of G.S. 113-221.3 (relating to information about water quality of coastal recreation waters) or for a person to have in his or her possession such a sign without just cause or excuse. See Section 13.3(sss).
- *Parks and forestry violations.* Effective for offenses committed on or after July 1, 2011, new G.S. 106-847 makes it a Class 3 misdemeanor to violate rules adopted by the Department of Agriculture and Consumer Services for use by the public of forests, lands, and waters under the Department's charge (formerly, under the charge of the Department of Environment and Natural Resources). See Section 13.25(o).

Courts (effective July 1, 2011, unless otherwise noted)

- The Administrative Office of the Courts (AOC) must contract with the National Center for State Courts to develop a workload formula for superior court judges. Amended G.S. 7A-109 requires the minutes of the clerk to reflect the date and time of each convening of court as well as the date and time of each recess or adjournment with no further business by the court. Each month the AOC must provide this information to the National Center for State Courts, the Fiscal Research Division of the General Assembly,

and the Study Committee on Consolidation of Judicial and Prosecutorial Districts (discussed below). *See* Section 15.6.

- The UNC School of Government must study the feasibility and cost of creating an Office of Prosecutorial Services and must submit its report to the House and Senate Appropriations Subcommittees on Justice and Public Safety by April 1, 2012. *See* Section 15.7.
- Amended G.S. 7A-102(a) requires that each office of the clerk of superior court must have no fewer than five total staff positions in addition to the elected clerk of superior court. *See* Section 15.8.
- The Revenue Laws Study Committee must study the penalties and fines for infractions and waivable offenses and determine whether the current amounts are appropriate. The committee must make its report to the General Assembly on the convening of the 2012 regular session. *See* Section 15.9.
- Amended G.S. 7A-304(a) requires the assessment of costs in all criminal cases in which a defendant is convicted, including cases in which a person receives an active prison sentence (previously, in such cases the judgment had to specifically require costs), which may not be waived unless the judge makes a written finding of just cause to grant a waiver. *See* Section 15.10.
- The act creates the Study Committee on Consolidation of Judicial and Prosecutorial Districts to study the number and structure of judicial and prosecutorial districts and make recommendations to reduce and consolidate those districts. The committee may submit its report to the General Assembly when it convenes for its 2012 regular session. The committee terminates on the filing of the report or convening of the 2012 regular session, whichever is earlier. *See* Section 15.11.
- The AOC must develop protocols to offer regular administrative court sessions in each district court district to hear motor vehicle infractions. Each district must offer such sessions regularly by October 1, 2011. The AOC must report to the Joint Legislative Commission on Governmental Operations by February 1, 2012. *See* Section 15.11A.
- Amended G.S. 7A-498.7(b) gives the Commission on Indigent Defense Services the authority to appoint the chief public defender in districts with public defender offices (was, senior resident superior court judge in the district). The amended statute continues to require the local bar to nominate two to three candidates, from which the Commission will make its selection. *See* Section 15.16(b).
- The Office of Indigent Defense Services must issue requests for proposals from private law firms or not-for-profit legal representation organizations for the provision of legal services to indigent clients. The Office must use private assigned counsel funds to enter into contracts when the contracts provide representation services more efficiently than current costs and ensure quality representation consistent with constitutional and statutory requirements. The Office must report on its progress to the Joint Legislative Commission on Governmental Operations by October 1, 2011. *See* Section 15.16(c), as amended by Section 39 of S.L. 2011-391.
- Amended G.S. 7A-498.5(f) requires that the Commission on Indigent Defense Services set compensation rates for expert witnesses at a rate no greater than the rate set by the Administrative Office of the Courts under G.S. 7A-314(f). *See* Section 15.20.
- The act maintains a trial court administrator position in the following judicial districts: 4, 5, 7B/7C, 10, 12, 14, 18, 21, 26, and 28. *See* Section 15.21.

- The Department of Health and Human Services (DHHS), Division of State Operated Facilities, must issue a request for proposals for the consolidation of forensic hospital care. DHHS must report to the Joint Appropriations Subcommittee for Health and Human Services by October 30, 2011, with cost details and savings identified from the proposals. *See* Section 10.12.

Costs (effective July 1, 2011, unless otherwise noted)

- For a detailed discussion of cost changes, see the following AOC memos:
 - [Court Costs and Fee Chart](#)
 - [Legislative Increases in Court Costs and Fees, July 2011](#)
 - [Additional Legislative Increases in Court Costs and Fees, August 2011](#)
 - [2011 Costs and Fees Changes—Frequently Asked Questions](#)
- The act amends G.S. 7A-304(a)(4) to increase court costs in criminal cases from \$100.50 to \$129.50 in district court and from \$102.50 to \$154.50 in superior court. *See* Section 31.23(a).
- New G.S. 14-107.2 allows community mediation centers (also known as dispute resolution centers) to establish and charge fees for its services in worthless check programs, and amended G.S. 7A-38.7 provides that the \$60 fee assessed when a criminal case is resolved through a community mediation center will be remitted by the clerk to the Mediation Network (was, to the State Treasurer), which may retain up to \$3 for administrative expenses and must remand the remainder to the community mediation center that mediated the case. *See* Section 31.24.
- Amended G.S. 148-65.7(a) increases from \$150 to \$250 the transfer application fee for a parolee or probationer convicted in this state who requests supervision in another state under the Interstate Compact for Adult Offender Supervision. *See* Section 31.25.
- The act imposes the following additional fees, effective August 1, 2011. *See* Section 31.26, as amended by Section 7(n) of S.L. 2011-192. For a further discussion of these fees, see [Additional Legislative Increases in Court Costs and Fees, August 2011](#) at p. 3–4.
 - New G.S. 7A-304(a)(2b) imposes an \$18 fee in district court for the maintenance in county jails of people convicted of misdemeanors.
 - New G.S. 7A-304(a)(4b) imposes a cost of \$50 “for all offenses arising under Chapter 20 of the General Statutes and resulting in a conviction of an improper equipment offense.”
 - Amended G.S. 7A-313 increases from \$5 to \$10 the fee for each 24 hours of pretrial confinement.
- New G.S. 7A-304(g) provides that changes to costs or fees in G.S. 7A-304 apply to costs or fees collected on or after the effective date of the change except in “waiver” cases, in which case the amount of the costs or fees is the lesser of the new amount of costs or fees and the amount specified in the notice portion of the citation or other criminal process. *See* Section 63(b) of S.L. 2011-391.

Department of Justice

- The Department of Justice must issue a request for information to determine the cost of having a private company maintain the software required for criminal information databases managed by the Criminal Information Division. The Department must report

the results to the House and Senate Appropriations Subcommittees on Justice and Public Safety and to the Fiscal Research Division by March 1, 2012. *See* Section 16.6.

Juvenile Justice

- Amended G.S. 115D-5(b) deletes the authority of the State Board of Community Colleges to provide for the waiver of tuition and registration fees for juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention (DJJDP). *See* Section 8.12(a)
- The act states that it is the General Assembly's intent to increase the use of community-based alternatives whenever possible and reduce reliance on detention and youth development center commitments. The act directs DJJDP and the Department of Correction to work together to increase the use of in-home monitoring as an alternative to detention for juveniles. The departments must assess monitoring needs in both the adult and juvenile systems and report their findings and recommendations to the House and Senate Appropriations Subcommittees on Justice and Public Safety, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, and the Fiscal Research Division by September 1, 2011. *See* Section 17.6.

Corrections

- The Post-Release Supervision and Parole Commission, with the assistance of the North Carolina Sentencing and Policy Advisory Commission and the Department of Correction, must continue to analyze the amount of time each parole-eligible inmate has served compared to the time served by offenders under structured sentencing for comparable crimes and must determine whether the person has served more time in custody than the person would have served had he or she received the maximum sentence under structured sentencing. *See* Section 18.7.
- The Department of Correction must study probation and parole officer workloads, analyzing the types of offenders supervised, distribution of officers' time by type of activity, caseload carried by officers, and comparison to practices in other states. The Department must report the results of the study and recommendations for any adjustments to caseload goals to the House and Senate Subcommittees on Justice and Public Safety by January 1, 2013. *See* Section 18.13.

Department of Crime Control and Public Safety

- Effective January 1, 2012, the act establishes the Department of Public Safety as a new executive department and transfers to that Department the powers and functions of the Department of Correction, Department of Crime Control and Public Safety, and Department of Juvenile Justice and Delinquency Prevention. New Article 5A of G.S. Chapter 143 (G.S. 143B-259 through 143B-259.2) describes the organization of the Department of Public Safety, the divisions within it, and the powers and duties of the Department. The act makes numerous conforming changes to existing statutes to reflect the reorganization. *See* Section 19.1.

21. [S.L. 2011-146 \(S 513\)](#): **Raffles by credit unions.** Effective October 1, 2011, the act adds G.S. 14-308.1(h) to permit credit unions to conduct “savings promotion raffles” under new G.S. 54-109.64. The latter statute describes the circumstances in which credit unions may conduct such raffles.
22. [S.L. 2011-189 \(S 449\)](#): **Study of fraud against older adults.** Effective June 23, 2011, the act requires the Consumer Protection Division of the Department of Justice to coordinate a task force to examine fraud against older adults. The task force includes representatives from that division, the Division of Aging and Adult Services of the Department of Health and Human Services, the North Carolina Senior Consumer Fraud Task Force, the North Carolina Association of County Directors of Social Services, the Banking Commission, the Senior Tar Heel Legislature, and other associations. The task force must make an interim report by November 1, 2011, and a final report with draft legislation by October 1, 2012, to the North Carolina Study Commission on Aging.
23. [S.L. 2011-190 \(S 268\)](#): **Intimidating witnesses.** Effective for offenses committed on or after December 1, 2011, the act amends G.S. 14-226(a) to increase the punishment for intimidating a witness, or attempting to intimidate a witness, from a Class H to a Class G felony.
24. [S.L. 2011-191 \(H 49\)](#): **Increased punishment for DWI.** Effective for offenses committed on or after December 1, 2011, the act creates a new, higher level of punishment for impaired driving—aggravated level one—and changes some punishment provisions for existing punishment levels. The act is known as “Laura’s Law”; this title is not a part of the enacted legislation, but it was the short title of the bill that ultimately was enacted.
For a discussion of this act, see Motor Vehicle Law, below. *See also* Jamie Markham, [Post-Release Supervision for Aggravated Level One DWI Offenders](#), posting to North Carolina Criminal Law: UNC School of Government Blog (July 28, 2011); Shea Denning, [Laura’s Law](#), posting to North Carolina Criminal Law: UNC School of Government Blog (July 13, 2011).
25. [S.L. 2011-192 \(H 642\)](#), as amended by [S.L. 2011-391 \(H 22\)](#) and [S.L. 2011-412 \(H 335\)](#): **Justice Reinvestment Act.** The following is based in large part on a summary of the act by School of Government faculty member Jamie Markham. *See* [The Justice Reinvestment Act: An Overview](#), posting to North Carolina Criminal Law: UNC School of Government Blog (June 30, 2011). The effective dates are noted in connection with each provision.
Narrowing of distinction between community and intermediate punishment. The act retains the community/intermediate/active (“C/I/A”) framework in the sentencing grids under structured sentencing, but it redefines the meaning of community and intermediate punishments. A community punishment will be one that includes supervised or unsupervised probation and any condition of probation except drug treatment court or special probation. The only requirement for a punishment to be intermediate will be that it include supervised probation; no longer will the court be required to impose one of the six intermediate conditions (such as special probation or house arrest with electronic monitoring) to make a sentence intermediate. These changes appear in amended G.S. 15A-1340.11(2) (definition of community punishment); amended G.S. 1340.11(6) (definition of intermediate punishment); and new G.S. 15A-1343(a1) (conditions a court may impose as part of a community or intermediate punishment). They apply to people placed on probation based on offenses that occur on or after December 1, 2011. For a further

discussion of these changes, see Jamie Markham, [Community Punishment and Intermediate Punishment](#), posting to North Carolina Criminal Law: UNC School of Government Blog (Oct. 12, 2011).

Authority delegated to probation officers, including authority to impose jail time. Through delegated authority, probation officers will be empowered to impose new conditions of probation in both community and intermediate cases, including jail confinement. The jail confinement condition is limited to two- to three-day periods that total no more than six days per month, and the jail time may be imposed only during any three separate months of the period of probation. (Thus, the most jail time an officer could impose through the condition in a single probation case would be 18 days.) The officer can impose the jail time only if the offender waives his or her right to a hearing and counsel by signing a waiver of rights, with the probation officer and a supervisor as witnesses; the act does not require the taking of the waiver by a judicial official. If the offender executes a waiver, he or she has no statutory right to have the officer's action reviewed by a court. These changes appear in amended G.S. 15A-1343.2(e) (delegated authority in community punishment cases) and amended G.S. 15A-1343.2(f) (delegated authority in intermediate punishment cases). They apply to people placed on probation based on offenses occurring on or after December 1, 2011. For a further discussion of these delegated authority provisions, see Jamie Markham, [Delegated Authority in Probation Cases](#), posting to North Carolina Criminal Law: UNC School of Government Blog (July 14, 2011).

Repeal of intensive supervision and other intermediate conditions. The act repeals the definition of intensive supervision and the statutory special condition referring to intensive supervision. The law also repeals the definitions of "day-reporting center" and "residential program." The repealed provisions are G.S. 15A-1343(b1)(3b) and 15A-1340.11(3), (5), and (8). The repeal applies to people placed on probation based on offenses occurring on or after December 1, 2011.

Addition of "absconding" condition. The act adds G.S. 15A-1343(b)(3a) to make it a regular condition of supervision for all probationers that they not "abscond, by willfully avoiding supervision or by willfully making [their] whereabouts unknown to the supervising probation officer." Effective for offenses committed on or after December 1, 2011, a similar provision is added in new G.S. 15A-1368.4(e)(7a) for post-release supervisees. As amended by S.L. 2011-412, Sec. 4, the change applies to offenses committed on or after December 1, 2011.

Limitations on judge's authority to revoke probation. Effective for probation violations on or after December 1, 2011, the act amends G.S. 15A-1344(e) to provide that a court may revoke probation (that is, activate the entirety of a suspended sentence) for two specific types of violations only: committing a new criminal offense and absconding. For other violations, the court will be limited to other existing non-revocation options (such as imposition of a split sentence) or a new response option allowing 90 days of confinement (or up to 90 days for misdemeanors) under new G.S. 15A-1344(d2). The court is not allowed to revoke probation for a violation that does not involve absconding or a new crime unless a defendant has previously received two periods of confinement under the new 90-day confinement provision; however, if the time remaining on a defendant's sentence (felony or misdemeanor) is less than 90 days, then any term of confinement ordered under new G.S. 15A-1344(d2) must be for the remaining period of the sentence.

Expansion of post-release supervision for all felonies and increase in post-release supervision for Class B1 through E felonies. Under current law, post-release supervision applies to Class B1 through E felonies only. Effective for offenses committed on or after

December 1, 2011, amended G.S. 15A-1368.2(a) and (c) increase the period of post-release supervision from 9 to 12 months for Class B1 through E felonies (except for Class B1 through E felonies subject to sex offender registration, which require a five-year supervision period) and impose a new nine-month period of post-release supervision for Class F through I felonies. The act also amends G.S. 15A-1340.17(d) and (e) to add time to all the maximum sentences on the sentencing grids—an additional 3 months for the Class B1 through Class E felonies (other than those subject to sex offender registration, which are subject to an additional 60 months as provided in [S.L. 2011-307](#) (S 684)) and an additional 9 months for the lesser felonies—to account for the release of inmates 12 and 9 months, respectively, before they attain their maximum. The act does not make any changes to the minimum sentences in the sentencing grid. For a further discussion of these changes, see Jamie Markham, [Changes to Post-Release Supervision on the Way](#), posting to North Carolina Criminal Law: UNC School of Government Blog (July 19, 2011).

Limitations on the Post-Release Supervision and Parole Commission's authority to revoke post-release supervision. In much the same way that the act limits a court's authority to revoke probation, it amends G.S. 15A-1368.3(c)(1), effective for offenses committed on or after December 1, 2011, to limit the Commission's authority to revoke post-release supervision to supervisees who abscond or commit a new criminal offense or who are subject to sex offender registration. Other supervisees may be returned to prison for only three months at a time, after which they must be released back onto post-release supervision unless they have completed service of the time remaining on their maximum imposed term.

Changes to habitual felon law. Amended G.S. 14-7.6 provides that habitualized felonies will be sentenced four classes higher than the principal felony for which the person was convicted and never higher than Class C. The act specifies that this change applies if the principal felony is committed on or after December 1, 2011.

New habitual breaking and entering offense. New Article 2D of G.S. Chapter 14 (G.S. 14-7.25 through 14-7.31) creates a new habitual breaking and entering "status offense" that a prosecutor may charge if a person has a prior felony breaking and entering conviction and is charged with a new felony breaking and entering offense (defined in the new statutes as first- or second-degree burglary, breaking out of a dwelling house burglary, breaking or entering buildings generally, breaking or entering a place of worship, or any substantially similar crime from another jurisdiction). If so charged, the second conviction is punished as a Class E felony. The act specifies that this change applies if the principal felony is committed on or after December 1, 2011.

Mandatory application of G.S. 90-96(a) probation for eligible defendants and other changes to discharges, dismissals, and expunctions for drug offenses. The act changes the eligibility criteria for discharge and dismissal of certain drug offenses under G.S. 90-96(a). On the one hand, it limits eligibility by excluding defendants with prior felony convictions of any kind. On the other hand, it expands eligibility by allowing discharge and dismissal of any felony drug possession crime under G.S. 90-95(a)(3), regardless of substance or amount. Amended G.S. 90-96(a) provides further that the court "shall" (was, "may") place any eligible defendant on probation without entering judgment of guilt. The act also amends G.S. 90-96(a1) to allow but not require the court to place a person on probation as specified in that subsection if the current offense satisfies the criteria in that subsection and subsection (a) of G.S. 90-96. In contrast to subsection (a), subsection (a1) provides that no prior offense occurring more than seven years before the date of the current offense is considered; thus, subsection (a1) appears to provide a basis for discretionary relief for

people who have older convictions that otherwise would disqualify them from obtaining mandatory relief under subsection (a). As under subsection (a), a person is entitled to a discharge and dismissal on completion of probation under subsection (a1). A person who obtains a discharge and dismissal under subsections (a) or (a1) under G.S. 90-96 may obtain an expunction of the matter if he or she satisfies the criteria in G.S. 15A-145.2(a). The act also amends the expunction provisions in G.S. 90-96(d) and the corresponding procedure in G.S. 15A-145.2(b) to allow an expunction of any felony possession offense under G.S. 90-95(a)(3) if the charges were dismissed or the person was found not guilty; and it amends the expunction provisions in G.S. 90-96(e) and the corresponding procedure in 15A-145.2(c) to allow an expunction of a conviction of a felony possession offense if the person has no prior convictions specified in those statutes. The act states that these provisions become effective January 1, 2012, and apply to people who enter a plea or who are found guilty of an offense on or after that date. That language is relatively easy to apply to the discharge and dismissal procedures in revised G.S. 90-96(a) and (a1) and the advanced supervised release provisions, discussed next, but it is unclear how it applies to the revised expunction provisions. In cases in which a person seeks expunction of a dismissal, the person may have entered no plea. The General Assembly also may not have intended to distinguish the right to obtain an expunction for a conviction based on when the person entered a plea or was found guilty. For a further discussion of the basic requirements for expunction, see John Rubin, [Expunction Guide: Types, Requirements, and Impact of 2009 Legislation](#), ADMINISTRATION OF JUSTICE BULLETIN No. 2009/10 (Dec. 2009).

Creation of advanced supervised release. Effective for pleas or findings of guilt on or after January 1, 2012, people who are convicted of Class D through H offenses and who are in certain prior record levels will be eligible for early release from prison under “advanced supervised release” (or ASR) in new G.S. 15A-1340.18. Regardless of the actual sentence imposed, the person will have an opportunity to be released from prison after serving the shortest possible mitigated sentence he or she could have received for the offense or 80 percent of the imposed minimum if the defendant received a sentence in the mitigated range. To obtain release at the ASR date, the inmate must complete risk reduction incentives created by the Department of Correction, such as treatment, education, and rehabilitation programs (or be unable to complete such incentives through no fault of his or her own). As amended by S.L. 2011-412, Sec. 2.7, the new statute provides that the court, in its discretion and without objection from the prosecutor, may order the Department of Correction to admit a defendant to the ASR program and that the Department must admit to the ASR program only those defendants for which the court in its sentencing judgment ordered ASR. For a further discussion of ASR, see Jamie Markham, [Advanced Supervised Release](#), posting to North Carolina Criminal Law: UNC School of Government Blog (Sept. 22, 2011).

Elimination of the Criminal Justice Partnership Program (CJPP). The act repeals CJPP in Article 6A of G.S. Chapter 143B and replaces it with the Treatment for Effective Community Supervision program in new Article 6B, G.S. Chapter 143B (G.S. 143B-274.1 through 143B-274.11). The repeal of CJPP eliminates the statutory requirement for a county to have a criminal justice partnership advisory board. Advisory boards typically included judges, prosecutors, defense lawyers, sheriffs, and others who advised county commissioners on the need for local community corrections programming and helped manage program implementation and evaluation. Under the new law, funding of local community corrections programs will be managed centrally by the Department of Correction. New G.S. 143B-274.8 creates a 23-member State Community Corrections Advisory Board, made up of members of

the court system, service providers, and others, to advise the Department of Correction.

Service of misdemeanors in jail. The act amends G.S. 148-32.1 and other statutes to require that all felony sentences and all misdemeanor sentences requiring confinement of more than 180 days be served in the Department of Correction. The law retains the rule that sentences of 90 days or less should be served in the local jail and establishes a new program for people convicted of misdemeanors other than impaired driving with sentences of confinement of 91 to 180 days. Those inmates will be ordered to confinement pursuant to a new "Statewide Misdemeanant Confinement Program" administered by the North Carolina Sheriffs' Association. The Sheriffs' Association will place covered inmates in jails that have volunteered space for the program. The costs of housing and caring for covered inmates will be paid by a statewide fund pursuant to the terms of a contract between the Department of Correction and the Sheriffs' Association. The rules for service of an impaired driving sentence continue unchanged. Under G.S. 20-176(c1), an impaired driving sentence must be served in the jail unless the defendant has previously been jailed for a Chapter 20 violation or unless it is for a second or subsequent impaired driving conviction. The sentencing provisions become effective January 1, 2012, but people serving sentences for misdemeanors before that date may be reassigned to a county jail to the extent the county is prepared to accept transfers. For a further discussion of this provision, see Jamie Markham, [Where to Serve a Sentence](#), posting to North Carolina Criminal Law: UNC School of Government Blog (Oct. 5, 2011).

Evaluation and report. The Sentencing and Policy Advisory Commission and Department of Correction must jointly conduct evaluations on the implementation of the Justice Reinvestment Act. The first report must be submitted by April 15, 2012, and annually thereafter on April 15, to the Joint Legislative Correction, Crime Control, and Juvenile Justice Oversight Committee and the Senate and House Appropriations Subcommittees on Justice and Public Safety.

26. [S.L. 2011-193 \(H 227\): Disturbing human remains.](#) Effective for offenses committed on or after December 1, 2011, the act amends G.S. 14-401.22 to add several new offenses:

- willfully disturbing, vandalizing, or desecrating human remains (subject to certain exceptions, such as acts by a first responder or licensed funeral director), a Class I felony;
- willfully committing or attempting to commit on any human remains any act of sexual penetration (subject to the same exceptions for the above offense), a Class I felony;
- attempting to conceal evidence of the death of another by knowingly and willfully dismembering or destroying human remains, a Class H felony; and
- committing the offense immediately above, knowing or having reason to know the human remains are of a person who did not die of natural causes, a Class D felony.

27. [S.L. 2011-194 \(S 31\): Unauthorized practice of medicine.](#) Effective for offenses committed on or after December 1, 2011, the act amends G.S. 90-18 to distinguish among different acts of practicing medicine without a license and to provide for different penalties. Practicing medicine without a license is a Class 1 misdemeanor; practicing without a license and representing oneself as being licensed is a Class I felony; practicing without a license by an out-of-state practitioner is a Class I felony; and practicing without a license due to the failure

to complete timely annual registration or practicing while licensed under another article of Chapter 90 is a Class 1 misdemeanor.

28. **S.L. 2011-199 (H 380): Subpoenas for electronically stored information.** Effective for actions filed on or after October 1, 2011, the act amends several rules of civil procedure, applicable to civil cases; among the amended rules, however, is Rule 45 of the North Carolina Rules of Civil Procedure, applicable to criminal cases by virtue of G.S. 15A-802, which provides that Rule 45 applies to criminal cases with limited exceptions. Amended Rule 45(a)(2) provides that a subpoena to produce documents and other tangible evidence (a subpoena duces tecum) may require the production of electronically stored information and may specify the form in which the electronically stored information is to be produced. Amended Rule 45(d) elaborates on the ways in which a responding party must produce electronically stored information. The act also amends Rule 45(c) to add as a ground for objecting to a subpoena duces tecum that it subjects the person to undue expense.

For a further discussion of this act, see Civil Procedure, Estates, and Special Proceedings, below.

29. **S.L. 2011-216 (H 381): Stopping patterns at vehicle checkpoints.** See Motor Vehicle Law, below.

30. **S.L. 2011-217 (H 386): Collateral consequences for real estate brokers.** Effective January 1, 2012, amended G.S. 93A-6(b) provides that the North Carolina Real Estate Commission may suspend or revoke the license of any person or entity licensed under G.S. Chapter 93A, or reprimand or censure any licensee for any misdemeanor or felony that involves false swearing, misrepresentation, deceit, extortion, theft, bribery, embezzlement, false pretenses, fraud, forgery, larceny, misappropriation of funds or property, perjury, or any other offense showing professional unfitness or involving moral turpitude that would reasonably affect the licensee's performance in the real estate business. This provision replaces a narrower list of offenses. The act also amends G.S. 93A-4 to provide that criminal record reports obtained in connection with an application for licensure are not public records.

31. **S.L. 2011-231 (H 762): Hunting on or taking pine straw from another's land without consent.** G.S. 14-159.6 has made it a Class 2 misdemeanor for a person to hunt, fish, or trap on or remove pine straw from another's land in certain circumstances. Effective for offenses committed on or after October 1, 2011, the act revises this and related statutes. Amended G.S. 14-159.6(a) makes it a Class 2 misdemeanor to hunt, fish, or trap on another's land without the written permission of the owner, lessee, or agent if the property has been posted in accordance with G.S. 14-159.7(1) or (2), discussed below. The act deletes the provision, applicable to Halifax and Warren counties only, that prohibited arrests without the consent of the landowner or agent. The amended statute requires that the written permission be carried on one's person, be dated within the past twelve months, and be displayed on request to law enforcement. A valid written permission includes permission to a club of which the person is a member.

Amended G.S. 14-159.6(b) makes it a Class 1 misdemeanor to remove pine needles or pine straw from property posted in accordance with G.S. 14-159.7(1) without the written consent of the owner or agent.

New G.S. 14-159.6(c) states that it is an affirmative defense to a violation of G.S. 14-

159.6(a) or (b) to have permission from the owner, lessee, or agent even though the person did not have a written permission with him or her at the time of citation or arrest.

Amended G.S. 14-159.7 allows two ways of posting property. Subsection (1) continues the current posting specifications, such as the required size and spacing of the posted notices, and applies to both the hunting and pine straw offenses. Subsection (2) allows an owner to post property against hunting, fishing, or trapping by purple marks on trees or posts as provided in that subsection.

Amended G.S. 14-159.10 authorizes enforcement of G.S. Chapter 14, Article 22A, which includes the above statutes, by sheriffs, deputy sheriffs, law enforcement officers of the Wildlife Resources Commission, and other peace officers with general subject matter jurisdiction.

32. [S.L. 2011-232 \(H 927\)](#): Improper receipt of decedent's retirement allowance. Effective for acts committed on or after December 1, 2011, new G.S. 135-18.11, 128-38.5, 135.75.2, and 120-4.34 make it a Class 1 misdemeanor for a person, with intent to defraud, to receive money as a result of cashing, depositing, or receiving a direct deposit of a decedent's retirement allowance under the circumstances described in the new statutes. These statutes all relate to public employee retirement systems (teachers and state employees, county and city employees, and the like).

33. [S.L. 2011-240 \(H 12\)](#): Restrictions on retail sales of pseudoephedrine products. Effective January 1, 2012, new G.S. 90-113.52A requires retailers, before completing a sale of a pseudoephedrine product, to electronically submit certain information to the National Precursor Log Exchange (NPLEx) if the NPLEx system is available to North Carolina retailers without charge and the retailer has Internet access. The seller may not complete the sale if the system generates a stop alert. If the seller is unable to comply with the electronic sales tracking requirements because of a mechanical or electronic failure of the electronic sales tracking system, the seller must record that the sale was made without submission to the NPLEx system. For offenses committed on or after January 1, 2012, amended G.S. 90-113.56(a) makes it a Class A1 misdemeanor for a retailer to knowingly and willfully violate G.S. 90-113.52A; a second or subsequent offense is a Class I felony. Amended G.S. 90-113.56(b) makes it a Class 1 misdemeanor for a purchaser or employee to knowingly and willfully violate G.S. 90-113.52A; a second offense is a Class A1 misdemeanor; a third or subsequent offense is a Class I felony. The act also directs the Legislative Commission on Methamphetamine Abuse to study the implementation of the provisions of the act and the potential cost of making pseudoephedrine products a Schedule III controlled substance; an interim report is due by the 2012 Regular Session of the 2011 General Assembly, and a final report is due by the convening of the 2013 General Assembly.

34. [S.L. 2011-241 \(S 125\)](#): Violations related to regional schools. Effective June 23, 2011, new Part 10 of Article 16 of Chapter 115C (G.S. 115C-238.56A through 115C-238.56N) authorizes local boards of education to jointly establish regional schools. New G.S. 115C-238.56G(3) makes it a Class 1 misdemeanor for a person to aid or abet a student's unlawful absence from a regional school. New G.S. 115C-238.56N requires the board of directors of a regional school to adopt policies on conducting criminal history checks of school personnel as defined in the statute, and subsection (h) of the statute makes it a Class A1 misdemeanor for an applicant for employment to willfully provide false information on an employment application that is the basis for a criminal history check.

35. [S.L. 2011-243](#) (H 271): **Carrying of concealed weapon by off-duty probation and parole officers.** Effective December 1, 2011, new G.S. 14-269(b)(6) excludes certified state probation and parole officers while off duty from the ban on carrying a concealed weapon in G.S. 14-269(a) as long as the officer is not consuming alcohol or an unlawful controlled substance and the officer does not have alcohol or an unlawful controlled substance in his or her body.
36. [S.L. 2011-244](#) (H 311): **Household goods carriers.** See Motor Vehicle Law, below.
37. [S.L. 2011-245](#) (S 311): **Authorization for warrantless arrests for pretrial release violations; electronic monitoring of sex offenders and others.** G.S. 15A-401(b) has authorized officers to arrest a person without a warrant for a violation of a pretrial release order entered under G.S. 15A-534.1(a)(2), which concerns pretrial release conditions in domestic violence cases. Effective for violations of pretrial release conditions occurring on or after December 1, 2011, amended G.S. 15A-401(b) authorizes officers to make a warrantless arrest for any violation of a pretrial release order entered under G.S. 15A-534, which is the general provision on pretrial release. Officers may make a warrantless arrest whether the violation occurs in or out of their presence.
- The act also amends provisions related to electronic monitoring, effective October 1, 2011. The act adds a definition of electronic and satellite-based monitoring in G.S. 15A-101.1, the statute that addresses electronic technology generally in criminal cases. It also revises G.S. 14-208.18, which prohibits a person who is required to register as a sex offender from being on certain premises, including schools intended primarily for the use of minors. New G.S. 14-208.18(g1) provides that a person who is required to register as a sex offender and who is subject to satellite-based monitoring must wear an electronic monitoring device that provides exclusion zones around the premises of elementary and secondary schools in North Carolina. Presumably, these exclusion zones will correspond to the locations where a person may not lawfully be present. Thus, G.S. 14-208.18 prohibits people covered by the statute from being on the premises of a school intended primarily for the use of minors but does not exclude them being present beyond school premises.
38. [S.L. 2011-247](#) (H 379): **Interstate Depositions and Discovery Act and potential applicability to criminal cases.** Effective for cases pending on or after December 1, 2011, the act creates new G.S. Chapter 1F, the North Carolina Interstate Depositions and Discovery Act. Its principal purpose is to simplify the procedure for parties in a civil case in one state to take depositions of witnesses in another state. The act also may affect criminal cases because, in addition to creating new G.S. Chapter 1F, it amends North Carolina Rule of Civil Procedure 45, which is applicable to criminal cases by virtue of G.S. 15A-801 and 15A-802 except as otherwise specified. New Rule 45(f) sets forth the procedure for obtaining discovery, including obtaining a deposition, from a person residing in a state or U.S. territory outside North Carolina. The new provisions do not appear to exclude criminal cases. See also [Uniform Interstate Depositions and Discovery Act](#) (National Conference of Commissioners on Uniform State Laws, 2007). If the new provisions apply to criminal cases, a party in a North Carolina case would be able to obtain a deposition or other discovery in another state only if the other state allows such discovery. Thus, if another state allows depositions in criminal cases, as in Florida, a party in a North Carolina criminal case may be able to use amended Rule 45 to depose a witness residing there; if the other state does not allow depositions, the amended provisions would not give a party in North Carolina that right.

Rule 45(f) provides that if required by the other state's procedures, a party first must obtain a commission (an order) from a North Carolina court before seeking the discovery in the other state.

39. [S.L. 2011-248 \(S 394\)](#): **Principal's duty to report certain offenses to law enforcement.** See Juvenile Law: Delinquent Juveniles, below.
40. [S.L. 2011-250 \(H 408\)](#): **Changes to criminal discovery.** Effective for cases pending on or after December 1, 2011, the act makes modest changes to North Carolina's criminal discovery laws. These changes are in addition to those made in [S.L. 2011-19](#), which primarily made changes to the SBI crime lab but also explicitly required production of lab notes and data and made discovery violations a crime in some instances. Amended G.S. 15A-903(a)(1) distinguishes between a prosecutor's office, defined as the office of the prosecuting attorney, and an investigatory agency, defined as any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor's office. The change helps clarify the obligations of the different entities—law enforcement agencies, investigatory agencies, and prosecutors' offices—that must provide information for disclosure to the defense. The change does not alter the obligation of the State as a whole to provide the defense with the complete files of all law enforcement agencies, investigatory agencies, and prosecutors' offices involved in the investigation of the crimes allegedly committed or the prosecution of the defendant.
- Amended G.S. 15A-903(c) provides that law enforcement and investigatory agencies must make the required files available to the prosecutor's office on a timely basis (was, on request by the prosecutor).
- New G.S. 15A-904(a3) provides that the State is not required to disclose the identity of any person who provides information about a crime to a Crime Stoppers organization under assurance of anonymity unless ordered by the court. The new subsection includes a definition of a Crime Stoppers organization.
- New G.S. 15A-904(a4) provides that the State is not required to disclose the Victim Impact Statement in a case—defined as the document submitted by the victim or family to the State pursuant to the Victims' Rights Amendment—unless otherwise required by law.
- New G.S. 15A-910(c) provides that for purposes of determining whether to impose personal sanctions for untimely disclosure of law enforcement and investigatory agency files, it is presumed that prosecuting attorneys and their staffs acted in good faith if they made a reasonably diligent inquiry of those agencies and disclosed the responsive materials. This presumption does not appear to apply to the untimely disclosure of prosecutor office files. New G.S. 15A-910(d) provides that if the court imposes any sanction, it must make specific findings justifying the sanction.
- Amended G.S. 15A-903(a)(2), which addresses disclosure by the prosecutor of expert witnesses, and amended G.S. 15A-905(c)(2), which addresses disclosure by the defense of expert witnesses, require the Administrative Office of the Courts and Office of Indigent Defense Services to develop standard fee scales for expert witnesses and private investigators paid with state funds.
41. [S.L. 2011-254 \(H 629\)](#): **Substance abuse and other treatment.** Effective for sentences imposed on or after December 1, 2011, the act amends G.S. 15A-1343(b1), which deals with special conditions of probation during the period of probation and authorizes undergoing medical or psychiatric treatment and remaining in a specified institution if required for that

purpose. As amended, G.S. 15A-1343(b1)(1) provides that, notwithstanding G.S. 15A-1344(e), which limits the period of special probation, a defendant may be required “to participate in such treatment for its duration regardless of the length of the suspended sentence imposed.”

Effective June 23, 2011, the act amends G.S. 15A-1343(b3) to provide that a defendant ordered to submit to a period of residential treatment at Black Mountain Substance Abuse Treatment Center for Women must undergo a screening to determine chemical dependency. This requirement continues to apply to the Drug Alcohol Recovery Treatment program (DART) as well. Also effective June 23, 2011, amended G.S. 90-113.33(9) authorizes the North Carolina Substance Abuse Professional Practice Board to adopt rules related to the approval of a substance abuse specialty curriculum adopted by a school, college, or university.

42. [S.L. 2011-263](#) (H 36): False complaint about failure of employer to use E-Verify system.

Effective October 1, 2012, January 1, 2013, and July 1, 2013, depending on the number of the employer’s employees, the act adds a new Article 2, Verification of Work Authorization, in G.S. Chapter 64 (G.S. 64-25 through 64-38). New G.S. 64-28(a) prescribes a procedure for filing a complaint with the North Carolina Commissioner of Labor that an employer is violating its E-Verify obligations under the new article. New G.S. 64-28(b) makes it a Class 2 misdemeanor to knowingly file a false and frivolous complaint against an employer. An employer’s violation of the new E-Verify requirements is subject to administrative penalties by the Commissioner of Labor.

43. [S.L. 2011-265](#) (H 641): Certificate of relief from collateral consequences. In 2010, the Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws) adopted the [Uniform Collateral Consequence of Conviction Act](#) to assist states in developing strategies for addressing the collateral consequences of a criminal conviction. Collateral consequences are effects that generally are not imposed as part of a criminal sentence but arise as a result of the criminal conviction and in many instances continue long after the person completes his or her sentence. North Carolina and other states impose a wide range of collateral consequences, such as licensing and employment bars and benefit disqualifications, for criminal convictions.

In the uniform act, the Uniform Law Commission recommended that states allow ex-offenders to apply for relief, according to specified criteria, from collateral consequences that could impede their ability to reintegrate into society. Effective December 1, 2011, the North Carolina General Assembly enacted such a procedure in new Article 6 of G.S. Chapter 15A (G.S. 15A-173.1 through 15A-173.6), allowing certain ex-offenders to apply to the court for a certificate of relief from collateral consequences. The North Carolina act is more limited than the uniform act, but it allows ex-offenders convicted of lower level felonies and misdemeanors to obtain some relief. Because the act does not contain any limiting language on the effective date of December 1, 2011, the procedure is available to ex-offenders who meet the requirements for relief whether their offenses or convictions occurred before or after that date.

The basic requirements for relief, contained in new G.S. 15A-173.2, are as follows:

1. The person must have been convicted of no more than two Class G, H, or I felonies or misdemeanors in one session of court and have no other convictions for a felony or misdemeanor other than a traffic violation.

2. The person must petition the court in which the convictions occurred—specifically, the senior resident superior court judge if the convictions were in superior court and the chief district court judge if the convictions were in district court. These judges may delegate their authority to hold hearings and issue, modify, or revoke certificates of relief to other judges or to clerks or magistrates in their district. The procedure for the filing and hearing of the petition, such as the giving of notice to the district attorney’s office, is described in new G.S. 15A-173.4. *See also* G.S. 15A-173.6 (requiring the victim witness coordinator in the district attorney’s office to give notice of the petition to the victim).
3. The person must establish certain matters by a preponderance of the evidence, including that twelve months have passed since the person completed his or her sentence, that the person is engaged in or is seeking to engage in a lawful occupation or activity, and that the person has no criminal charges pending.

If granted, a certificate of relief applies to two types of collateral consequences: “collateral sanctions,” defined as a penalty, disability, or disqualification imposed by operation of law, such as a mandatory bar on obtaining a license for a particular occupation; and “disqualifications,” defined as a penalty that an agency, official, or court may impose based on the conviction, such as a discretionary bar on an occupational license. A certificate of relief relieves the person of all automatic “collateral sanctions” except for those listed in new G.S. 15A-173.3 (for example, sex offender registration requirements and firearm disqualifications); those imposed by the North Carolina Constitution or federal law (for example, the state constitutional ban on holding the office of sheriff if previously convicted of a felony and the federal bans on federally-assisted housing and food stamp benefits for certain convictions); and those specifically excluded in the certificate. A certificate of relief does not bar an entity from imposing a discretionary “disqualification” based on the conviction, but the entity may consider the certificate favorably in deciding whether to impose the disqualification. A certificate of relief also does not result in an expunction or pardon of the conviction; a person must use other mechanisms, if available for the conviction in question, to obtain those forms of relief.

Through a grant from the Z. Smith Reynolds Foundation, the indigent defense education group at the UNC School of Government is developing a searchable, electronic database, specific to North Carolina, of the collateral consequences of criminal convictions. This collateral consequences assessment tool (C-CAT) will be available in early 2012. The database will assist people in identifying the collateral consequences that apply to different offenses and the potential relief available under the new certificate-of-relief procedure. For additional information about C-CAT, contact [Whitney Fairbanks](#), Civil Defender Educator at the School of Government.

44. **S.L. 2011-267 (S 272): Crime victims compensation.** Effective for claims submitted on or after July 1, 2011, the act amends G.S. 15B-2(3), which defines “collateral source,” to add a charitable gift or donation by a third party, including a charity care write-off of expenses by a medical provider. (Recoveries from collateral sources reduce the amount of compensation a crime victim may receive under the Crime Victim’s Compensation Act.) Amended G.S. 15B-2(7) limits compensation for a “dependent’s economic loss” (as defined in that subsection) to a maximum of \$300 per week for 26 weeks commencing from the date of the injury. Amended G.S. 15B-8.1(b) provides that all personal information, as defined in 18 U.S. C. 2725(3), of victims and claimants and all information concerning the disposition of claims for

compensation, except for the total amount of the award, must be kept confidential by the Crime Victims Compensation Commission and Director. Amended G.S. 15B-14(b) provides that, on request of the Attorney General, the proceedings on a claim for compensation shall (was, may) be suspended pending disposition of a criminal prosecution that has been commenced or is imminent.

45. **S.L. 2011-268 (H 650): Self-defense and guns.** Effective for offenses committed on or after December 1, 2011, the act expands the circumstances in which a person may use defensive force and own, possess, and carry a firearm.

Self-defense and other uses of defensive force. North Carolina law recognizes various circumstances in which a person may lawfully use force against the threat of harm. Through decades of decisions, the North Carolina appellate courts have recognized the right to defend oneself, other people, and one's home and property, among other interests, and have developed rules on when those rights apply and amount to a defense to criminal charges. New G.S. 14-51.2, 14-51.3, and 14-51.4 address several of the circumstances in which a person may use defensive force. The statutes restate the law in some respects and broaden it in others. The courts will have to examine their procedures closely to give effect to the new statutory language.

For example, the new defensive-force statutes recognize the right to use deadly force against a forcible, unlawful intrusion into a motor vehicle. The courts therefore will need to develop new jury instructions to reflect this right. If faced with such a threat, a person often would have the right to use deadly force under existing doctrines as well—namely, the right to defend oneself and any other vehicle occupants and also to prevent the commission of a dangerous felony. A person would have the right to raise these defenses and have the jury instructed on them, in addition to the new defense of motor vehicle right, in light of the general principle that a person may rely on multiple defenses that arise from the evidence and on the statement in new G.S. 14-51.2(g) that the statute “is not intended to repeal or limit any other defense that may exist under the common law.”

To take another example, the courts will have to incorporate into their procedures the new statutory presumption of lawfulness, applicable to the use of deadly force against a forcible intrusion into a home, motor vehicle, or workplace. The law has allowed a person to use deadly force against such intrusions, but the courts will have to consider the new presumption in evaluating whether the State has offered sufficient evidence to withstand a motion to dismiss by the defendant and, in cases that go to the jury, will have to give appropriate instructions explaining the presumption. The following summary highlights the key provisions of the new statutes; it does not attempt to address all of the issues the courts will need to consider, which will be covered in a later bulletin on the effect of the law.

New G.S. 14-51.2 modifies defense of habitation, called defense of home in the statute; explicitly recognizes a comparable defense for the workplace; and adopts a new defense involving motor vehicles. All involve defending against forcible intrusions into those areas under the circumstances described in the statute. Most important, the statute creates a presumption of lawfulness in the sense that if a lawful occupant of a home, motor vehicle, or workplace uses deadly force against an intruder and meets the other conditions in the statute, the occupant is presumed to have held a reasonable fear of imminent death or serious bodily harm to himself, herself, or another. The statute states that the new presumption is rebuttable and does not apply in five detailed instances, as when “the person against whom the defensive force is used has the right to be in or is a lawful resident of the home, motor vehicle, or workplace, such as an owner or lessee, and there is not an

injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person.” The act repeals G.S. 14-51.1, which modified the common law version of defense of home to allow deadly force to terminate as well as prevent entry by an intruder. Repealed G.S. 14-51.1 also stated that a person has no duty to retreat from an intruder into the home. New G.S. 14-51.2 restates these principles for defense of home, motor vehicle, and workplace cases.

New G.S. 14-51.3 addresses the right to use deadly and nondeadly force to defend oneself and others. The statute appears to track the courts’ approach to these rights in most respects, but it may introduce new principles or at least clarify existing ones. For example, the statute states that a person is justified in using deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if the person reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself, herself, or others. The statute does not limit this principle to cases involving a home, motor vehicle, or workplace. Under current law, a person has no duty to retreat in comparable circumstances (that is, when a person is faced with a felonious assault), but the statute’s express statement of the principle may require the court to instruct the jury about it in all cases.

New G.S. 14-51.4 describes the circumstances in which a person is not entitled to rely on the defenses in new G.S. 14-51.2 and G.S. 14-51.3—for example, when a person is the aggressor by initially provoking the use of force against himself or herself. Again, these circumstances are similar in many respects to those recognized under current law, but differences exist, requiring close comparison of the statute to existing doctrines.

Changes to gun statutes. In addition to the changes to the right to use defensive force, the act makes the following changes to gun rights:

- Amended G.S. 14-269(b) exempts additional personnel from the prohibition on carrying a concealed weapon. It adds exemptions for district attorneys, assistant district attorneys, and investigators with a district attorney’s office who have concealed carry permits (except for when they are in a courtroom or are drinking) and qualified retired law enforcement officers with concealed carry permits. It also allows detention and corrections officers to keep firearms locked in their vehicles at work. Amended G.S. 14-415.27 exempts district attorneys, assistant district attorneys, and investigators from the prohibitions on areas in which a person may not carry a concealed handgun.
- Amended G.S. 14-269.2(b) requires that a person “knowingly” possess or carry a firearm on school property to be charged with a Class I felony under that subsection.
- New G.S. 14-269.4(6) and G.S. 14-415.11(c)(2) allow a person with a concealed carry permit to have a firearm in a locked vehicle while on the state property specified in that statute, such as the grounds of the State Capitol Building.
- Amended G.S. 14-268.7(a) requires that a minor “willfully and intentionally” possess or carry a handgun to violate that subsection and increases the punishment from a Class 2 to Class 1 misdemeanor.
- Amended G.S. 14-269.8(a) and amended G.S. 50B-3.1(d) allow people who are subject to the firearms prohibition upon issuance of a domestic violence protective order to own a firearm. They still may not possess, purchase, or receive a firearm if subject to the firearms prohibition.

- Amended G.S. 14-288.8(b) and 14-409(b) exempt from the prohibition on weapons of mass destruction—for example, machine guns—people who lawfully may possess or own such weapons under federal law.
- New G.S. 14-408.1 makes it a Class F felony to solicit a licensed dealer or private seller of firearms or ammunition to transfer a firearm or ammunition under circumstances that the person knows would be illegal; or provide a licensed dealer or private seller with information the person knows to be materially false with the intent to deceive the dealer or seller about the legality of the transfer.
- Amended G.S. 14-415.1 provides that a person is not subject to the prohibition on possession of a firearm by a felon if, pursuant to the law of the jurisdiction in which the conviction occurred, the person has been pardoned or has had his or her firearms rights restored if the restoration could have been granted under North Carolina law.
- New G.S. 14-415.11(c1) allows a person with a concealed carry permit to carry a concealed handgun on the grounds or waters of a park within the State Parks System.
- Amended G.S. 14-415.15 reduces from 90 to 45 days the time for the sheriff to issue or deny an application for a concealed carry permit and likewise reduces from 90 to 45 days the maximum period for a temporary, emergency permit.
- Amended G.S. 14-415.23 allows local governments to adopt an ordinance prohibiting the carrying of concealed weapons in local government buildings, their appurtenant premises, and recreational facilities (was, local buildings, their appurtenant premises, and parks). The amended statute defines recreational facilities as including only playgrounds, athletic fields, swimming pools and athletic facilities. If a local government adopts an ordinance for recreational facilities, a permittee may secure the handgun in a locked vehicle in an enclosed area of the vehicle. For a further discussion of this provision, see Jeff Welty, [Guns in Parks](#), posting to North Carolina Criminal Law: UNC School of Government Blog (Sept. 26, 2011).
- Amended G.S. 14-415.24 provides that a valid concealed carry permit issued by another state is valid in North Carolina (was, if the other state grants the same right to North Carolina residents who have valid concealed carry permits).
- New G.S. 120-32.1(c1) prohibits the Legislative Services Commission from adopting rules prohibiting the transportation or storage of a firearm in a closed compartment or container within a locked vehicle on state legislative buildings or grounds. The new provision also allows a legislator or legislative employee to have a firearm in a locked vehicle in a state-owned parking space leased or assigned to that person.

46. [S.L. 2011-270 \(S 498\)](#); [S.L. 2011-282 \(H 736\)](#): Parental choice about corporal punishment of student. G.S. 115C-391(a)(5) has prohibited corporal punishment of a student with a disability as defined in that subsection if the student’s parent or guardian stated in writing that corporal punishment may not be administered on the student. S.L. 2011-270 amended G.S. 115C-391(a)(5) to prohibit corporal punishment of *any* student whose parent or guardian stated in writing that corporal punishment may not be administered on the student. S.L. 2011-282, a much larger act addressing school discipline, repeals G.S. 115C-391 in its entirety but adds new G.S. 115C-390.4 containing the same provision on corporal punishment, effective beginning with the 2011-12 school year.

47. [S.L. 2011-271 \(H 427\)](#): Seizure of motor vehicles in felony speeding to elude arrest cases. See Motor Vehicle Law, below.

48. [S.L. 2011-277 \(S 135\)](#): **Use of juvenile record for bond and plea decisions.** See Juvenile Law: Delinquent Juveniles, below.

49. [S.L. 2011-278 \(S 397\)](#): **Expunction of nonviolent felonies for offenders under age 18.**

Effective December 1, 2011, the act adds G.S. 15A-145.4 to create a new expunction for criminal convictions. Because the effective-date clause does not contain limiting language, the new expunction procedures appear to be available to any person who meets the requirements, regardless of whether the offense or conviction occurred before or after December 1, 2011.

- The offense must be a “nonviolent felony,” defined in subsection (a) as any felony that does not fall into one of nine categories, including a Class A through G felony, a felony that includes assault as an essential element, and a felony for which the convicted offender must register as a sex offender. Subsection (b) allows the expunction of multiple nonviolent felonies for which a person is convicted at the same session of court if none of the offenses occurred after the person had already been charged and arrested for the commission of a nonviolent felony.
- Subsections (c), (d), and (e) contain the requirements for expunction. Subsection (c) describes the requirements for the petition, and subsections (d) and (e) describe the responsibilities of the court in rendering a decision. Together they require the following:
 - The person must have been less than age 18 at the time of the commission of the nonviolent felony.
 - The petition may not be filed earlier than four years after the date of conviction or the completion of any active sentence, probation, or post-release supervision, whichever occurs later.
 - The person must not have been previously convicted of a felony or misdemeanor other than a traffic violation (required by subsections (c) and (e)), must have been free of any such conviction for the above four-year period (required by subsection (e)), and must have no outstanding warrants or pending criminal cases (required by subsection (e)).
 - The person must have performed 100 hours of community service since the conviction, “preferably related to the conviction” according to subsection (c).
 - The person must have no outstanding restitution requirements and must possess a high school diploma, high school graduation equivalency certificate, or general education development degree.
 - The person must not have a previous expunction (required by subsection (e)).
- Under subsection (c), the petition must be served on the district attorney, who has thirty days in which to file an objection. The district attorney must make his or her best efforts to contact the victim before the hearing.
- Before rendering a decision on the petition, the court must take the steps required by subsection (d), including calling on a probation officer for additional investigation or verification of the person’s conduct during the four years since the conviction in question. Subsection (e) provides that if the court finds that the petitioner has met all of the requirements, the court “may” grant the petition. Subsections (f) through (h) describe the legal effect of the granting of an expunction petition and the responsibilities of agencies affected by the order. Subsection (i) requires the probation

officer assigned to the person and, if none, the court at the time of the conviction to advise the person of the potential eligibility for expunction.

The act also amends G.S. 15A-151 to allow the Administrative Office of the Courts to disclose, for employment and certification purposes only, information about the expunction to state and local law enforcement agencies, the North Carolina Criminal Justice Education and Training Standards Commission, and the North Carolina Sheriffs' Education and Training Standards Commission. (New G.S. 15A-145.4(f) requires a person pursuing certification from either of those commissions to disclose expunged felony convictions.) The act likewise amends G.S. 17C-13 and 17E-12 to allow these commissions access to the information and to authorize them to deny, suspend, or revoke a person's certification based solely on conviction of a felony, whether or not expunged.

50. **[S.L. 2011-283 \(H 542\)](#): Limits on expert testimony.** As part of new limits in civil tort actions, the General Assembly revised North Carolina Evidence Rule 702(a) in G.S. Chapter 8C, which is applicable to criminal and civil cases. As amended, the rule allows an expert witness to give an opinion only if the testimony is based on sufficient facts or data, the testimony is the product of reliable principles and methods, and the witness has applied the principles and methods reliably to the facts of the case. The amended rule is effective for actions commenced on or after October 1, 2011.

For a further discussion of this act, see Judicial Authority & Administration, below; see also Alyson Grine, [Legislative Change Regarding Expert Testimony](#), posting to Forensic Science in North Carolina Blog (Aug. 17, 2011).

51. **[S.L. 2011-285 \(H 243\)](#): No fee for certificates under seal for appointed counsel.** See Judicial Authority & Administration, below.
52. **[S.L. 2011-291 \(H 595\)](#): Reorganization of legislative oversight committees.** Effective June 24, 2011, the act reorganizes and consolidates several legislative committees and commissions, some involving courts and criminal justice issues. Section 1.4 of the act renames the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, under G.S. 120-70.93 through 120-70.95, as the Joint Legislative Oversight Committee on Justice and Public Safety, adds three members, transfers the duties of the Joint Legislative Committee on Domestic Violence to that Committee, and specifies additional matters related to juveniles for the Committee to examine. The act makes conforming changes to various statutes to provide for the submission of reports to the renamed oversight committee, such as reports by the State Bureau of Investigation on the DNA database required by G.S. 15A-266.5 and reports by the North Carolina Innocence Inquiry Commission on its activities as required by G.S. 15A-1475.
53. **[S.L. 2011-303 \(H 805\)](#): Criminal record check as condition of obtaining name change.** See Civil Procedure, Estates, and Special Proceedings, below.
54. **[S.L. 2011-307 \(S 684\)](#): Changes in maximum sentence and post-release supervision for offenses requiring registration as a sex offender.** Effective for offenses committed on or after December 1, 2011, new G.S. 15A-1340.17(f) adds sixty months to the maximum term of imprisonment for Class B1 through E felonies requiring registration as a sex offender. This sixty-month increase corresponds to the sixty-month period of post-release supervision for

Class B1 through E felonies requiring registration as a sex offender. The additional sixty months is in lieu of the nine months added to the maximum term of imprisonment under current law for all Class B1 through E felonies and the additional twelve months required for all Class B1 through E felonies under the Justice Reinvestment Act ([S.L. 2011-192](#) (H 642), applicable to offenses committed on or after December 1, 2011). Amended G.S. 15A-1368.2(a) provides that a person whose maximum sentence is increased by sixty months pursuant to new G.S. 15A-1340.17(f) must be released for post-release supervision sixty months before the end of his or her sentence. As a result of these changes, if a person violates post-release supervision, he or she may be returned to prison for an additional sixty months. Amended G.S. 15A-1354(b) and 15A-1368(a)(5) provide that if a defendant is convicted of more than one offense, the sixty-month increase does not apply to the additional offenses. For a discussion of the potential *Blakely* implications of this change (that is, whether a jury must make findings to allow increase of the sentence beyond its maximum), as well as other aspects of this act, see Jamie Markham, [Changes to Post-Release Supervision for Sex Offenders](#), posting to North Carolina Criminal Law: UNC School of Government Blog (July 21, 2011).

Effective June 27, 2011, amended G.S. 15A-1368.2(b) provides that “a willful refusal to accept post-release supervision or to comply with the terms of post-release supervision,” as defined in the amended statute, is punishable as a contempt of court under G.S. 5A-11 and may result in imprisonment for up to thirty days under G.S. 5A-12. The change applies to all offenses requiring registration as a sex offender, not just Class B1 through E felonies, and also appears to apply to offenses committed before or after the stated effective date as long as the person is still on post-release supervision and commits the violation on or after the effective date. The amended statute states that a person who is imprisoned for this contempt is not entitled to credit for time served against the sentence for which the person is subject to post-release supervision. The amended statute also states that if a person refuses post-release supervision and is not released for that reason, post-release supervision is tolled—that is, the person is still subject to the applicable period of post-release supervision. Amended G.S. 143B-266(a) gives the Post-Release Supervision and Parole Commission authority to conduct contempt proceedings for such a violation in accordance with the requirements for plenary contempt proceedings under G.S. 5A-15. In plenary contempt proceedings, an indigent respondent is entitled to appointed counsel. See G.S. 7A-451(a)(1) (providing for the right to appointed counsel if imprisonment is likely to be imposed); *Hammock v. Bencini*, 98 N.C. App. 510 (1990) (recognizing the right to appointed counsel for criminal contempt if imprisonment is likely to be imposed); *McBride v. McBride*, 334 N.C. 124 (1993) (recognizing the same right for civil contempt).

55. [S.L. 2011-313](#) (S 602), as amended by [S.L. 2011-412](#) (H 335): Allowing fowl to run at large.

Effective for offenses committed on or after December 1, 2011, the act amended G.S. 68-25 to make it a Class 3 misdemeanor for a person to permit any domestic fowl to run at large on the lands of a commercial poultry operation of another person; and for a person who owns or operates a commercial poultry operation to permit the commercial operation’s fowl to run at large on adjoining property. S.L. 2011-412, Sec. 3.1, repeals the prohibition applicable to commercial poultry owners and operators.

56. [S.L. 2011-321](#) (S 98): Restriction on availability of information revealing natural voice of

911 caller. G.S. 132-1.4(c)(4) provides that the contents of 911 calls are public records except for contents that reveal information that may identify the caller, victim, or witness

(such as the caller's name). Effective June 27, 2011, amended G.S. 132-4.1(c) protects the natural voice of the caller, victim, or witness and allows release of a written transcript or altered voice reproduction to do so; however, the amended statute provides that "the original call shall be provided under process to be used as evidence in any relevant civil or criminal proceeding."

57. **S.L. 2011-323 (S 131): Collection fees for unpaid fines, fees, costs, and restitution.** See Judicial Authority & Administration, below.
58. **S.L. 2011-324 (S 143): Restrictions on access by offenders to public employees' personnel information.** G.S. 126-23 has provided that agencies having custody of the personnel information identified in that statute for public employees—such as the name of the employee, current position, office or station to which the employee is assigned, and disciplinary action against the employee—must permit examination of the records of that information. Effective June 27, 2011, new G.S. 126-23(d) provides that people in the custody or under the supervision of the Department of Correction or a local confinement facility are not entitled to access to and are prohibited from obtaining such records unless authorized by a court order. New G.S. 126-23(e) gives an attorney investigating unlawful misconduct or abuse by a Department of Correction employee the right to obtain information sufficient to identify the full name of the employee and current position with the Department (or the last position and date of employment of the employee); however, the attorney may not give the offender copies of departmental records or official documents unless authorized by a court order.
59. **S.L. 2011-325 (S 144): Regulation of cash converter businesses.** Effective for purchases by cash converters on or after December 1, 2011, the act amends G.S. Chapter 91A, which regulates pawnbrokers, to add cash converter businesses as defined in amended G.S. 91A-3, to require such businesses to keep the records described in new G.S. 91A-7.1, to make such businesses subject to the prohibitions in G.S. 91A-10, and to make violations a Class 2 misdemeanor under G.S. 91A-11 (except for violations of G.S. 91A-10(a)(6) or (b), which involve the taking or purchasing of an item known to be stolen and are subject to prosecution under North Carolina's criminal statutes).
60. **S.L. 2011-326 (S 148): Technical corrections to appointment of counsel and changes to controlled substance schedules.** Effective June 27, 2011, the act makes technical corrections to numerous statutes, including the following to specify, consistent with other statutes, that the appointment of counsel for a person entitled to counsel at state expense must be made in accordance with rules adopted by the Office of Indigent Defense Services: G.S. 7B-602(a) and 7B-1101.1(a) (provisional counsel for parent in abuse, neglect, or dependency cases and termination of parental rights cases); G.S. 15A-1345(e) (counsel for probationer for revocation proceedings); and G.S. 15A-269(c) and 15A-270.1 (counsel for motion for postconviction DNA testing and for appeal of denial of motion).
- The act also adds the following substances to the controlled substances schedules: in Schedule I, alpha-methyltryptamine and 5-methoxy-n-diisopropyltryptamine in G.S. 90-89(3) and n-benzylpiperazine and 2.5-dimethoxy-4-(n)-propylthiophenethylamine in G.S. 90-89(5); in Schedule II, lisdexamfetamine, including its salts, isomers, and salts of isomers in G.S. 90-90(3) and tapentadol in G.S. 90-90(2); and in Schedule III, nandrolone decanoate (was, nandrolone deconoate) in G.S. 90-91(k)5. These substances are not new. The Commission on

Mental Health, Developmental Disabilities, and Substance Abuse Services previously added them (other than the last, which involves a spelling correction) to the controlled substance schedules by administrative rule pursuant to its authority under G.S. 90-88, which authorizes the Commission to add, delete, or reschedule controlled substances. See [10 N.C. ADMIN CODE 26F.0102, .0103](#).

61. [S.L. 2011-329 \(S 241\)](#): **Level one DWI sentence if minor or disabled person is in vehicle.** See Motor Vehicle Law, below.
62. [S.L. 2011-329 \(S 241\)](#): **Recording of custodial interrogations for certain crimes and in cases involving juveniles.** In addition to the above changes involving DWI sentencing, the act revises G.S. 15A-211, which was part of several innocence initiatives that were enacted in 2007 and required electronic recording of custodial interrogations in homicide investigations at any place of detention. See John Rubin, [2007 Legislation Affecting Criminal Law and Procedure](#), ADMINISTRATION OF JUSTICE BULLETIN No. 2008/01, at pp. 5–6 (Jan. 2008). Effective for offenses committed on or after December 1, 2011, amended G.S. 15A-211 requires electronic recording of custodial interrogations at any place of detention for investigations related to any Class A, B1, or B2 felony and any Class C felony of rape, sex offense, or assault with a deadly weapon with intent to kill inflicting serious injury. The amended statute also requires electronic recording of all custodial interrogations of juveniles in criminal investigations conducted at any place of detention; this provision is not limited to specific offenses. The act does not define the term “juvenile.” The act may apply to custodial interrogations for all offenses committed by juveniles under age 16—that is, to delinquency cases. It also may apply to custodial interrogations for all offenses committed by juveniles under age 18 because the term “juvenile” is defined, at least for purposes of G.S. Chapter 7B, as a person who has not reached his or her 18th birthday. G.S. 7B-101(14); see also *State v. Fincher*, 309 N.C. 1 (1983) (applying statutory juvenile warning requirements to defendant under age 18). Amended G.S. 15A-211(c) also provides that for all interrogations subject to the statute a visual and audio recording must be simultaneously made when reasonably feasible, but the defendant may not raise the failure to do so as grounds for suppression under the statute.
63. [S.L. 2011-333 \(S 324\)](#): **Cherokee ABC Commission.** Effective June 27, 2011, the act authorizes the Eastern Band of Cherokee Indians, subject to the approval of the Secretary of the U.S. Department of the Interior, to establish its own Alcoholic Beverage Control (ABC) Commission. For a further discussion of the act, see Michael Crowell, [2011 North Carolina Legislation Affecting Alcoholic Beverage Control](#), at p. 2 (July 2011).
64. [S.L. 2011-336 \(S 349\)](#): **Collateral consequences for optometrists.** Effective June 27, 2011, the act adds a number of new provisions regulating optometrists, including in new G.S. 90-121.5(b4) that licensees must self-report to the State Board of Examiners in Optometry an arrest or indictment for a felony, driving while impaired, or possession, use, or sale of any controlled substance.
65. [S.L. 2011-349 \(474\)](#): **Photo identification required for dispensing of certain controlled substances.** Effective March 1, 2012, new G.S. 90-106.1 provides that pharmacies must require a person who is seeking dispensation of a Schedule II controlled substance or a Schedule III controlled substance listed in subdivision 1 through 8 of G.S. 90-91(d) to present

a valid, unexpired government-issued photographic identification in one of the following forms: a driver's license, a special identification card issued under G.S. 20-37.7, a military identification card, or a passport. The new statute does not apply to the dispensation of these controlled substances to employees of health care facilities, as defined in G.S. 131E-256(b), for the benefit of their patients.

66. [S.L. 2011-355 \(S 743\)](#): Violations of limited volunteer license for doctors and physician assistants. Effective June 27, 2011, new and amended G.S. 90-12.1A, 90-12.1B, 90-12.4A, and 90-12.4B make it a Class 3 misdemeanor, punishable by a fine from \$25 to \$50, for a holder of a limited or retired limited volunteer license to practice medicine and surgery or as a physician assistant in violation of the limitations of the license.

67. [S.L. 2011-356 \(S 762\)](#): Assault inflicting physical injury on law enforcement officers and others. Effective for offenses committed on or after December 1, 2011, the act creates new offenses with enhanced punishments for assaults inflicting physical injury on certain personnel.

New G.S. 14-34.7(c) makes it a Class I felony to assault a law enforcement, probation, or parole officer or detention facility employee in the discharge or attempted discharge of his or her duties if the assault inflicts "physical injury." The new statute states that physical injury includes "cuts, scrapes, bruises, or other physical injury which does not constitute serious injury." Assault on one of the listed officers that does not inflict physical injury remains a Class A1 misdemeanor under G.S. 14-33(c)(4), which covers assaults on state and local government officers and employees.

Amended G.S. 14-34.6(a), which has made an assault on a firefighter, emergency medical technician, medical responder, or emergency department personnel a Class A1 misdemeanor, creates the offense of assault inflicting physical injury on such personnel and makes the offense a Class I felony. An assault on these personnel that does not inflict physical injury is no longer covered by that statute; therefore, unless these personnel are state or local government employees, an assault that does not inflict physical injury appears to be a simple assault, a Class 2 misdemeanor under G.S. 14-33(a). Amended G.S. 14-34.6(b), which has made it a Class I felony to assault any of the personnel identified in subsection (a) if the assault inflicts serious bodily injury or is with a deadly weapon, makes a violation of amended subsection (a) a Class H felony if it inflicts serious bodily injury or is with a deadly weapon. As a result of this change, an assault on these personnel that does not inflict physical injury but is with a deadly weapon appears to be a Class A1 misdemeanor under G.S. 14-33(c)(1) and no longer a felony. Amended G.S. 14-34.6 does not contain its own definition of physical injury.

Amended G.S. 14-288.9, which has made it a Class 1 misdemeanor to assault emergency personnel as defined in that statute, creates the offense of assault causing physical injury to such personnel, a Class I felony. An assault on these personnel that does not inflict physical injury is no longer covered by that statute; therefore, unless they are state or local government employees, an assault that does not inflict physical injury appears to be a simple assault, a Class 2 misdemeanor under G.S. 14-33(a). Amended G.S. 14-288.9 does not contain its own definition of physical injury.

68. [S.L. 2011-361 \(H 113\)](#): Increased penalty for unsafe movement affecting motorcyclist. See Motor Vehicle Law, below.

69. [S.L. 2011-369 \(H 432\)](#): **Taking of feral swine.** Effective for acts on or after October 1, 2011, new G.S. 113-29.12 makes it unlawful to remove feral swine from a trap while the swine is still alive or to transport the live swine after that removal, and new G.S. 113-294(s) makes it a Class 2 misdemeanor to violate new G.S. 113-291.12, designating the acts of removal and transport as separate offenses.

70. [S.L. 2011-377 \(H 649\)](#), as amended by [S.L. 2011-412 \(H 335\)](#): **Bail bondsmen regulations and bond forfeiture.** The act makes two sets of changes, one involving miscellaneous regulations of bail bondsmen and the other on the procedure for setting aside a bond forfeiture.

Effective June 27, 2011, the act makes the following amendments to G.S. Chapter 58: (1) new G.S. 58-17-16 provides that a surety is not required to return any portion of a premium to the defendant if, after entering into an agreement, the defendant's bond is reduced; (2) amended G.S. 58-71-80(a) lists additional grounds for denying, suspending, and imposing other adverse license consequences against a bondsman, including convictions involving dishonesty and breach of trust; (3) amended G.S. 58-71-82 allows a person to hold simultaneously a professional bondsman's and runner's license; and (4) new G.S. 58-71-122 allows a licensed professional bondsman to transfer the bondsman's business to another licensed professional bondsman subject to the condition, among others, that the transferor remain responsible for all outstanding bond obligations until relieved as provided in the new statute.

Effective December 1, 2011, amended G.S. 15A-544.5(d)(1) allows a defendant, surety, professional bondsman or runner, or bail agent acting on behalf of an insurance company to move to set aside a forfeiture (was, defendant or surety generally); amended G.S. 15A-544.5(d)(2) specifies that the moving party must serve a copy of the motion on the district attorney and attorney for the county board of education and that the clerk of superior court also must provide a copy, by mail or personal delivery, to those attorneys; and amended G.S. 15A-544.5(d)(4) provides that the district attorney and attorney for the board of education have twenty days to object from the date a copy of the motion is provided by the clerk of superior court. The act makes the first two of these changes to the procedure for moving for relief from a judgment of forfeiture in G.S. 15A-544.8.

The act's preamble also refers to the North Carolina Court of Appeals unpublished decision of [State v. Cortez](#) (April 19, 2011), in which the clerk of court granted a motion to set aside a forfeiture when the district attorney and county board of education did not file a timely objection. Consistent with earlier published decisions, the Court of Appeals held that the clerk did not have the authority to grant the motion because it did not specify any of the required grounds for setting aside a forfeiture. The act's preamble states that it was not the intent of the General Assembly that the description of the content of motions in G.S. 15A-544.5(d)(1) would constitute a jurisdictional limitation on the clerk's authority to grant such motions; but, the body of the act made no changes to the required grounds for setting aside forfeitures. The third edition of the bill would have amended G.S. 15A-544.5(d)(4) to require the clerk to enter an order setting aside a forfeiture order "regardless of the basis for relief asserted in the motion, the evidence attached, or the absence of either" if a timely objection was not filed, but this language was not part of the enacted legislation. When the General Assembly briefly reconvened in September 2011, however, it restored the deleted language and directed in G.S. 15A-544.5(d)(4) that if a timely objection is not filed the clerk must set aside a forfeiture regardless of the grounds asserted or absence of grounds. See S.L. 2011-412, Sec. 4.2. The amended statute also specifies that the clerk must serve a

motion to set aside a forfeiture on the district attorney and board of education in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. According to S.L. 2011-412, the amended statute becomes effective October 15, 2011; the other changes to G.S. 15A-544.5, in S.L. 2011-377, do not become effective until December 1, 2011.

- 71. [S.L. 2011-378](#) (H 662): Fee for electronic monitoring as a condition of pretrial release.** Effective July 1, 2011, the act adds G.S. 7A-313.1 to allow a county that provides the personnel, equipment, and other costs of electronic monitoring as a condition of pretrial release to collect a fee from the offender that is the lesser of the amount of the jail fee allowed by G.S. 7A-313 (\$10 for each 24 hours of confinement beginning August 1, 2011) or the actual cost of providing the electronic monitoring. The new statute states that a county may not collect a fee from an offender who is determined to be indigent and entitled to court-appointed counsel. This fee is not collected by the clerk of court.
- 72. [S.L. 2011-381](#) (H 761): Tampering with ignition interlock system; false special identification cards; criminal history checks of applicants for restoration of a revoked driver's license.** See Motor Vehicle Law, below.
- 73. [S.L. 2011-385](#) (S 636), as amended by [S.L. 2011-412](#) (H 335): Provisional driver's licenses.** See Motor Vehicle Law, below.
- 74. [S.L. 2011-389](#) (H 678): Pilot program for release of inmates to adult care homes.** Effective June 28, 2011, the act directs the Department of Health and Human Services (DHHS), in collaboration with the Department of Correction, to establish a pilot program to allow inmates in need of personal care services and medication management to be placed in an adult care home. The act requires DHHS to select one adult care home for the pilot and to report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee no later than 18 months after the home admits its first resident.
- 75. [S.L. 2011-394](#) (H 119): Recycling violations by ABC permittees.** Effective July 1, 2011, new G.S. 130A-309.10 prohibits certain ABC permittees from knowingly disposing of beverage containers that are required to be recycled under G.S. 18B-1006.1 in landfills or incinerators.
- 76. [S.L. 2011-408](#) (S 315): Campaign signs in highway rights-of-way.** G.S. 136-32 has made it a Class 1 misdemeanor to place an unauthorized sign on a highway. Effective for elections held on or after October 1, 2011, amended G.S. 136-32 applies this prohibition to political signs but exempts political signs of a certain size in designated areas during periods before and after elections. New G.S. 136-32(e) makes it a Class 3 misdemeanor for a person to steal, deface, vandalize, or unlawfully remove a lawful political sign.
- 77. [S.L. 2011-411](#) (S 580): Automatic reinstatement of waivable offense.** Effective September 15, 2011, new G.S. 15A-932(d1) provides that if a person is charged with a waivable offense only, the prosecutor dismisses the case with leave for the person's failure to appear, and the person subsequently tenders a waiver and payment of all applicable fines, costs, and fees, the clerk must accept the waiver without written reinstatement of the case from the prosecutor. The new subsection also provides that on disposition of the case in this manner, the clerk must recall any outstanding criminal process (that is, any order for arrest for the

person's failure to appear).

78. [S.L. 2011-412 \(H 335\)](#): Changes to sentencing, corrections, and other legislation. The act makes the following revisions to legislation enacted earlier in the 2011 legislative session. Revisions that are primarily technical are not discussed. The act became law without the signature of the Governor, who did not approve it within the allotted time.

- Section 2.1 of the act amends [S.L. 2011-62](#) (H 270) by restoring the language in G.S. 15A-1343(b)(2) that requires as a condition of regular probation that the defendant remain within the jurisdiction of the court unless permitted in writing by the court or probation officer; the substitute language enacted by S.L. 2011-62 is deleted. Section 2.2 makes all of the changes in S.L. 2011-62 effective for offenses committed on or after December 1, 2011, except for the repeal of G.S. 15A-1344(g) (involving the tolling of probation), which remains effective for people placed on probation on or after December 1, 2011.
- Section 2.3(a) through (c) of the act clarifies one of the new requirements that a court or probation officer may impose as part of a community or intermediate punishment. The Justice Reinvestment Act, [S.L. 2011-192](#) (H 642), as amended by [S.L. 2011-391](#) (H 22), authorized the sentencing judge, in new G.S. 15A-1343(a1)(3), to impose as a condition of community or intermediate punishment up to six days of confinement per month during any three months of the period of probation. Probation officers were given similar delegated authority in new G.S. 15A-1343.2(e)(5) and (f)(6). The act clarifies that for defendants on probation for multiple judgments, these confinement periods must run concurrently and may not total more than six days per month. The changes are effective for offenses committed on or after December 1, 2011, the same effective date as for the new statutes.
- Section 2.3(d) of the act amends G.S. 15A-1344(d2), added by the Justice Reinvestment Act to authorize a court, in response to a violation of probation, to impose a 90-day period of confinement for a defendant under supervision for a felony conviction and up to 90 days for a defendant under supervision for a misdemeanor. The amended statute provides that if the defendant is arrested for a probation violation and confined pending a hearing, the prehearing confinement must be credited against the confinement the court imposes under the statute; any excess time must be credited against the activated sentence. The amended statute also provides that for defendants on probation for multiple offenses, confinement imposed under the statute must run concurrently on all cases. Confinement is in the correctional facility where the defendant would have served an active sentence. The changes are effective for probation violations on or after December 1, 2011, the same effective date as for the new statute.
- Section 2.5 of the act amends the effective date of G.S. 15A-1343(b)(3a), making it applicable to offenses committed on or after December 1, 2011. The statute, added by the Justice Reinvestment Act, makes "not absconding" a regular condition of probation.
- Section 2.7 amends G.S. 15A-1340.18, added by the Justice Reinvestment Act to create advanced supervised release (ASR). The amended statute clarifies that the court, in its discretion at sentencing and without objection from the prosecutor, may order the Department of Correction to admit a defendant to the ASR program (was, may include risk reduction incentives in sentencing the defendant). The amended statute states that the Department must admit to the ASR program only those defendants for which the court in its sentencing judgment ordered ASR. The ASR provisions continue to be

- effective for people who enter a plea or are found guilty on or after January 1, 2012.
- Section 3.1 repeals G.S. 68-25(b1), enacted by [S.L. 2011-313](#) (S 602), which made it a Class 3 misdemeanor for a person who owns or operates a commercial poultry operation to permit the commercial operation's fowl to run at large on adjoining property. The section leaves in place the new provision making it a Class 3 misdemeanor for a person to permit domestic fowl to run at large on the lands of a commercial poultry operation of another.
- Section 3.2 modifies the effective dates for the restrictions on limited learner's permits and provisional licenses in amended G.S. 20-11(d), (e), and (f), enacted by [S.L. 2011-385](#) (S 636). The new effective dates are October 1, 2011, and January 1, 2012, depending on the type of restriction and permit or license.
- Effective October 15, 2011, Section 4.1 of the act adds G.S. 58-71-200 to require the Administrative Office of the Courts (AOC) to provide professional bondsmen, surety bondsmen, and runners access to search criminal records in the AOC's real-time criminal information system. Under the new statute, the AOC may charge an initial setup fee, equivalent to the fee for government agencies, for establishing access to the system; however, record searches thereafter are at no charge to the bondsman or runner. Subsection (h) of G.S. 58-71-200 makes various violations a Class H felony. For example, a bondsman or runner authorized to access the AOC system may not allow another person to use that access; nor may a bondsman or runner distribute information obtained from the AOC system for any reason not directly related to evaluating bail for the individual for whom the information is obtained.
- Section 4.2 of the act amends G.S. 15A-544(d)(4), amended earlier in the session by [S.L. 2011-377](#) (H 649), to provide that if the district attorney and board of education do not file a timely objection to a motion to set aside a bail bond forfeiture, the clerk must enter an order setting aside the forfeiture "regardless of the basis for relief asserted in the motion, the evidence attached, or the absence of either." For a further analysis of the history of this provision, see the discussion of S.L. 2011-377, above.

Civil Procedure, Estates, and Special Proceedings

1. [S.L. 2011-199](#) (H 380): Discovery of electronic information.

Amends G.S. 1A-1, Rules 26, 33, and 34 of the Rules of Civil Procedure to include "electronically-stored information" among the items parties may obtain in the course of discovery. Further amends Rule 34 to govern the manner of production of electronically-stored information, and to provide that a party may object to a request for such information on the basis that it is not reasonably accessible because of undue burden or cost, or for reasons related to the requested manner of production. Adds provisions placing the burden in Rules 26 and 37 on the objecting party to show the basis for the objection, and providing that a court may nevertheless (with certain limitations) order the discovery for good cause shown. Amends Rule 37 to provide that a court generally may not sanction a party for failing to produce electronically-stored information lost as the result of routine, good-faith operation of an electronic information system.

Also amends Rules 16 to provide that a judge must (was, "may") make an order that includes the matters dealt with in a pre-trial conference held at the judge's discretion. Further adds new provisions to Rule 26 requiring a party withholding information on

grounds of privilege or protection to claim the basis expressly and reasonably describe the items withheld. Also provides a procedure for resolving inadvertent disclosure of privileged or protected information.

Revamps the procedure for a discovery conference pursuant to Rule 26(f). Most notably, the procedure is now structured to provide that, upon any party's request, the parties shall hold a meeting among themselves to resolve discovery issues and formulate a plan (with specific requirements set forth in the statute) to present to the court. If they are unable to agree on a plan, upon motion of a party the parties must report to and have a discovery conference before the court, at which the court shall enter a discovery plan. The court may initiate a discovery meeting or conference at any time if the parties do not do so.

Finally, amends Rule 45 to include electronically-stored information among the items subject to subpoena, and provides general requirements for the method and manner of requesting and producing such information and for objecting to its production. Effective October 1, 2011.

2. **[S.L. 2011-247 \(H 379\): Uniform Interstate Depositions and Discovery Act.](#)**

Enacts new G.S. Chapter 1F. Provides a procedure by which discovery in North Carolina relevant to an action in a foreign jurisdiction (another state) can be ordered by a North Carolina court. Requires a person requesting issuance of a subpoena in a North Carolina court to submit a subpoena of a foreign jurisdiction to a clerk of superior court in the North Carolina county where discovery is sought. The clerk must promptly issue a subpoena (with specific content requirements) for service upon the person to which the foreign subpoena is directed, open an appropriate court file, assign a file number, and collect the applicable filing fee pursuant to G.S. 7A-305(a)(2). A request for issuance of a subpoena under this act does not constitute an appearance in the North Carolina court. Sets forth provisions concerning service of the subpoena, applicable Rules of Civil Procedure, and applications for protective orders. Amends Rule 28(d) of the Rules of Civil Procedure to specify that the rule now applies only to depositions to be used in foreign countries (was, "outside this state").

Also creates new subsection (f) to Rule 45 of the Rules of Civil Procedure to allow a party to a North Carolina action to request discovery from persons outside North Carolina in the form of oral deposition, deposition on written questions, or request for production of documents and tangible things. The party must follow any procedures under the laws applicable to the area where discovery is sought, including obtaining a commission from the North Carolina court if required. If a commission is required, the party must make a motion in the court where the action is pending following the procedures sets forth in the rule, and the court shall hear and grant or deny the commission as set forth in the rule. Also directs the revisor of statutes to print all relevant portions of the official comments to the Uniform Interstate Depositions and Discovery Act. Effective December 1, 2011 and applies to all cases then pending or filed on or after that date.

3. **[S.L. 2011-299 \(H 687\): Attorney fees in actions against cities and counties.](#)**

Creates G.S. 6-21.6 to provide an award of attorney fees and costs to successful challengers to city or county actions. If the court finds the city or county acted outside the scope of its

authority, the court has discretion to award fees and costs. If the court further finds that the city or county's action was an abuse of discretion, the court "shall" award fees and costs. Effective October 1, 2011 and applies to claims for relief brought or defended on or after that date.

4. **S.L. 2011-303 (H 805): Additional requirements on name change applications.**

Amends G.S. 101-5 to require that applicants to the clerk for name changes submit with their applications the certified results of an official state and national criminal history record check and a sworn statement regarding county of domicile and outstanding tax and child support obligations. Clerk must provide certain instructions regarding obtaining the criminal history record check. Clerk is also required, in an order of name change, to summarize the information reviewed. Clerk must forward the order to the SBI Division of Criminal Information which shall update its records accordingly. Clerks are required to deny an order of name change where the clerk finds good and sufficient reason for doing so, and the clerk must state in the order the reasons for denial. Appeal of a denial is to the chief [senior] resident superior court judge within 30 days of the date of the denial order, and the judge's decision is final. There is a twelve-month waiting period for re-applications after denial. A clerk may set aside an order of name change in the event of fraud or material misrepresentation to the court. Effective June 24, 2011.

5. **S.L. 2011-317 (S 586): Motions in multicounty districts.**

Amends G.S. 1A-1, Rule 7(b)(4) of the North Carolina Rules of Civil Procedure to provide that a civil motion in a case filed in a multicounty district may be heard in another county within that district with permission of a district's senior resident superior court judge or judge's designee. The motion shall be heard in a civil session except in an emergency as determined by the senior resident superior court judge or designee. Effective October 1, 2011 and applies to actions arising on or after that date.

6. **S.L. 2011-332 (S 300): Service of process and other service amendments.**

Amends various statutes and Rules of Civil Procedure regarding service. Amends G.S. 7A-217 to allow service by signature confirmation or designated delivery service in small claims actions assigned to magistrates. Amends G.S. 150B-23(c), G.S. 150B-36(b3), G.S. 150B-38(c), and G.S. 150B-42(a) to provide for service in administrative cases in accordance with relevant provisions of Rules 4 and 5 of the Rules of Civil Procedure. Amends Rule 4(c) of the Rules of Civil Procedure to clarify that the sixty-day time frame for serving a summons applies to all summons under Rule 4(j) and (j1) (was, Rule 4(j)(1) a and b). Amends G.S. 7B-1102 to require that a copy of a motion to terminate parental rights that is served on a parent be sent to that parent's attorney of record, if any. Amends Rule 5(b) of the Rules of Civil Procedure to require that Rule 5(b) service be made upon a party's attorney of record, if any; that service upon an attorney may be made by mail; and that service upon a party (if permitted) may be made by handing a copy to the party, mailing a copy to the party, or, if the address is not known, by filing with the clerk of court. Effective October 1, 2011 and applies to actions as set forth in Section 5.

7. **S.L. 2011-341 (S 414): Reciprocal attorney fee provisions in business contracts.**

Creates G.S. 6-21.6, which provides that reciprocal attorney fee provisions in business contracts are valid and enforceable where the contract is signed by hand. "Business

contracts” does not include consumer or employment contracts or contracts with the State of North Carolina or one of its agencies. The court “may” award reasonable fees in accordance with the contract’s terms, considering all relevant facts and circumstances including thirteen factors listed in the statute. The amount of the fee is not governed by any stated percentage in the contract. Regarding the limit on fees in actions primarily for the recovery of monetary damages: G.S. 6-21.6(b) states that the award of reasonable attorney fees “may not exceed the monetary damages awarded,” while G.S. 6-21.6(f) states that the award “may not exceed the amount in controversy.” The statute is not intended to conflict with G.S. 6-21.2, and parties whose contracts fall within the coverage of both statutes may elect to recover under either. Effective October 1, 2011 and applies to business contracts entered into on or after that date.

8. **S.L. 2011-344 (S 432): Probate amendments and related changes.**

[Note: S.L. 2011-344 is an extensive act that includes amendments to many areas of estate law. This summary is an overview of the substantive provisions of the act and not a comprehensive listing of its amendments.]

- **Appeals and Costs.** Amends G.S. 1-301.3 to provide that: (1) this section applies to the administration of trusts (was, testamentary trusts) and of estates of decedents, incompetents and minors; the notice of appeal of a clerk’s order or judgment must contain a short and plain statement of the basis for the appeal (was, shall “specify” the basis); the notice of appeal must be filed within 10 days of entry of the clerk’s order; and that in an appeal to superior court, if the record is insufficient, the judge may receive additional evidence on the “factual” (was “evidentiary”) issue in question.

Amends G.S. 7A-307 to add estate proceedings under new G.S. 28A-2-4 to the list of matters in which costs are assessed under this section. States that the cost assessed for the filing of a caveat to a will is \$200, and that the only cost assessed with reopening an estate administration under G.S. 28A-23-5 is forty cents per \$100, or major fraction, of any additional gross estate, including income, coming into the hands of the fiduciary after the estate is reopened. Caps the total cost assessed, including the total cost assessed in all previous administrations of the estate, at \$6,000.

- **General Provisions for Estate Proceedings.** Creates new G.S. 28A-2-4 providing that the clerks of superior court have original jurisdiction of estate proceedings, and lists certain types of matters as estate matters. (Also amends G.S. 28A-1-1 to define “estate proceeding.”) States examples of estate proceedings under the subject matter jurisdiction of the clerk. Provides criteria regarding the transfer of an estate proceeding to superior court. Declares that the clerk does not have jurisdiction of (1) actions by or against creditors or debtors of an estate except as provided in Article 19 of G.S. Chapter 28A; (2) actions involving claims for monetary damages; (3) caveats, except as provide under G.S. 31-36; (4) proceedings to determine venue; and (5) recovery of property transferred or conveyed by a decedent with the intent to hinder, delay, or defraud creditors, pursuant to G.S. 28A-15-10(b).

Creates G.S. 28-2-5 to provide that the clerk has jurisdiction over special proceedings and that nothing in the statute is to be construed as limiting the jurisdiction of the clerk in special proceedings.

Creates G.S. 28A-2-6 through G.S. 28A-2-10 to make provisions for commencement of contested and uncontested estate proceedings as well as for pleadings, extensions of time, consolidation of an estate proceeding with a civil action, joinder of claims, and notice of transfer. Provides that certain Rules of Civil Procedure apply to estate proceedings, unless the clerk directs otherwise, and that the clerk may direct that any or all of the remaining Rules apply. Makes additional provisions governing representation of parties and waiver of notice of appeal. Gives the clerk authority to consider and approve certain settlements (not including caveats).

- **Probate of Will.** Amends G.S. Chapter 28A, recodifying Article 5 of G.S. Chapter 31 (G.S. 31-12 through G.S. 31-31.2) as Article 2A of G.S. Chapter 28A. Authorizes the clerk to shorten the initial 60-day period during which the executor may apply to have the will proved, if good cause is shown. Enacts new G.S. 28A-2A-7 to allow a person entitled to apply for probate of a will under G.S. 28-2A-1 or G.S. 28A-2A-2 to file a petition for probate of the will in solemn form, and to provide that the matter will proceed as an estate proceeding governed by G.S. Chapter 28A, Article 2. Makes directives regarding probate of a will in solemn form and contesting the validity of a will by an interested party.
- **Administration of Decedents' Estates.** Amends G.S. 28A-3-2 to provide that any interested person may file a petition to determine the proper venue for administration of the estate, and that the issue is to be heard by a judge. Amends G.S. 28A-4-1 to provide that any interested person may file a petition alleging that a person is disqualified to serve as administrator of the estate pursuant to G.S. 28A-4-2.

Amends the procedures in G.S. 28A-5-1 should a person named or designated as an executor fail to timely qualify or renounce the office of executor. Amends the procedures in G.S. 28A-5-2 should a person entitled to apply for letters of administration fail to timely apply for those letters.

Creates G.S. 28A-6-1(c) to provide that the clerk may rely on the following as evidence of death: (1) a certified or authenticated copy of a death certificate purported to be issued by an official or agency of the place where the death purportedly occurred, (2) a certified or authenticated copy of any record or report of a domestic or foreign governmental agency evidencing the date of death, (3) a certificate or authenticated copy of medical records evidencing the date of death, or (4) any other evidence that clerk deems sufficient to confirm the date of death.

Amends G.S. 28A-6-2 to provide that all persons entitled to an equal or higher preference for appointment as personal representative than an applicant who is not entitled to a priority of appointment are to be given 15 days' prior written notice of the application (unless the persons with an equal or higher preference have renounced).

Amends G.S. 28A-6-4 to clarify the procedure by which any interested person may by written petition (was, objection) contest the issuance of letters of administration or letters testamentary to a person who is otherwise entitled to apply. Provides that an

appeal from the clerk's order is as in an estate proceeding under G.S. 1-301.3 (was, as in a special proceeding).

Amends G.S. 28A-8-1 to provide that no bond is required for a personal representative who is a trust institution licensed under G.S. 53-159 (was, a national banking association having its principal place of business in this state or a state bank acting under G.S. 53-159).

Amends G.S. 28A-8-3 to provide that upon receipt of a verified petition by an interested party requesting modification of bond requirements, the clerk is to conduct a hearing in accordance with Article 2 (was, required the clerk to issue a citation requiring the personal representative to show cause why the bond should not be modified).

Amends G.S. 28A-8-5 to direct the clerk to conduct a hearing under Article 2 of G.S. Chapter 28A upon verified petition from any surety, on the bond of a personal representative, who is in danger of loss of the surety's suretyship. Amends subsection (b) of G.S. 28A-9-1 to allow the clerk to conduct a hearing, on the clerk's own motion or upon the verified petition of any person interested in the estate, in accordance with Article 2 of G.S. Chapter 28A to determine if any of the grounds for revocation of letters of administration, letters testamentary, or letters of collection as indicated in subsection (a) of this section exist. Provides that notice of the hearing is to be provided in accordance with Article 2. Amends G.S. 28A-9-4 and G.S. 28A-10-6 to clarify that (1) an appeal from the order of the clerk granting or denying revocation and (2) an appeal from an order of the clerk denying or allowing the resignation of a personal representative are special proceedings pursuant to G.S. 28A-2-9(b). Authorizes the clerk to issue a stay of an order of revocation or of an order allowing resignation upon the appellant posting an appropriate bond set by the clerk until such time as the cause is heard and determined upon appeal.

Current law requires a personal representative to petition the clerk to obtain an order authorizing the personal representative's custody, control, or possession over real property of the estate. Amendments to G.S. 28A-13-3 make an exception for real property that is given to the personal representative in the deceased person's will, or real property to which the personal representative acquires title during the administration of the estate, providing that the personal representative is immediately entitled to custody, possession, and control of real property meeting this exception and may institute an estate proceeding under subsection (d) to enforce those rights. Also provides that if the real property is occupied by a tenant or lessee, the personal representative may seek ejectment only through the summary ejectment provisions of G.S. Chapter 42.

Amends G.S. 28A-15-12, deleting subsection (a) and replacing it with subsection (a1), providing that a personal representative or collector has the right to sue in superior court to recover any property of any kind that belongs to the estate of the decedent and is entitled to certain provisional remedies under G.S. Chapter 1. Also deletes subsection (b) and replaces it with subsection (b1) providing a personal representative, collector, or any interested person has the right to file a verified petition to institute an estate proceeding for examination of any persons reasonably believed to be in possession of

property of any kind belonging to the decedent's estate and to make a demand for the recovery of that property.

Amends G.S. 28A-19-1 to provide that in a pending legal action against the decedent at the time of the decedent's death, which survives the decedent's death, the court may order, on motion, the substitution of the personal representative or collector for the decedent and that motion will constitute the presentation of a claim providing that the substitution occurs within the time specified for the presentation of claims under G.S. 28A-19-3.

Amends G.S. 28A-19-3 to clarify that, except as otherwise specifically provided in this section, the limitations on presentation of claims set out in this section apply to claims by the State of North Carolina, its subdivisions, and its agencies.

Amends G.S. 28A-19-5 to clarify that a claimant to a contingent or unliquidated claim may, within the prescribed three-month period, file a petition for an order of the clerk, provided that nothing in the statute requires the clerk to hear and determine the validity, priority, or amount of a contingent or unliquidated claim that has yet to become absolute.

Amends G.S. 28A-19-8 to provide that funeral expenses of a decedent advanced by a health care agent exercising authority described in G.S. 32A-19(b) are to be considered as an obligation of the estate regardless of whether or not a personal representative of the estate has been appointed at the time the expenses are incurred. Amends G.S. 28A-19-9 to authorize a decedent's health care agent duly appointed under G.S. Chapter 32A to purchase a gravestone and provide a suitable burial place and receive reimbursement for the expenses incurred subject to monetary limitations and procedures. Amends G.S. 28A-19-16 to provide that a claimant must begin an action for recovery with regards to a claim that is presented and rejected within three months of receiving written notice of the rejection (was, after due notice in writing or after some part of claim becomes due). In the case of a contingent or unliquidated claim, provides that the claimant must file a petition for an order from the clerk pursuant to G.S. 23A-19-5(b).

Amends G.S. 28A-21-2 to provide that absent an extension by the clerk of the time for filing the final account the personal representative or collector must file the final account for settlement within one year after qualifying or within six months after receiving a state estate or inheritance tax release, or in the time period for filing an annual account under G.S. 28A-21-1, whichever is later.

Creates new G.S. 28A-21-6 to provide that the personal representative or collector may give written notice (but is not required to do so) of a proposed final account under Rule 4 of the Rules of Civil Procedure to all devisees of the estate in the case of a will, and to all heirs of the estate when the decedent was without a will, indicating the date and place of the filing of the final account. Makes guidelines regarding permissive notice of final accounts. Amends G.S. 28A-23-1 to direct the clerk, upon reviewing and approving the personal representative's or collector's final account, to enter an order discharging the personal representative or collector from further duties and liabilities (was,

liabilities). Prohibits the discharge order from including a release or discharge of liability for any breach of duty as set forth in G.S. 28A-13-10(c).

Amends G.S. 28A-25-1 to provide that when the person collecting property by affidavit is the surviving spouse and only heir of the decedent, and is not disqualified under G.S. 28A-4-2, the property that may be collected under this section may be more than \$20,000 in value but may not exceed \$30,000 in value after reduction for any spousal allowance paid to the surviving spouse under G.S. 30-15.

- **Intestate Succession.** Enacts new G.S. 29-12.1 to provide that controversies arising under G.S. Chapter 29 are to be determined as estate proceedings under Article 2 of G.S. Chapter 28A, except for controversies arising under Article 8 of G.S. Chapter 29 (election to take life interest in lieu of intestate share), which are to be determined as set out in G.S. Chapter 29. Amends G.S. 29-30 to provide that when a surviving spouse of an intestate decedent elects to take a life estate in the dwelling house, and the value of that life estate is less than one-third in value of all the real estate, the surviving spouse may elect to take a life estate in other real estate of the intestate decedent so as to make the aggregate life estate of the surviving spouse equal to a life estate that is one-third in value of all the real estate. The election of the surviving spouse to take a life estate in one-third value of all the real estate of the decedent is to be made by a petition (was, a notice) in accordance with Article 2 of G.S. Chapter 28A. Also lists time periods for making the election and requires that the election be made before the shorter of the time periods. Directs that no provisions in subsection (c) of G.S. 29-30 extend the time period for a surviving spouse to petition for an elective share under Article 1A of G.S. Chapter 30. Provides for service of the petition in accordance with G.S. 1A-1, Rule 4. Provides that the rules of procedure relating to partition proceedings under G.S. Chapter 46 apply to the election and procedure to allot and set apart the life estate, except to the extent they would be inconsistent with this section. Provides that a determination of the life estate under this section may be appealed in accordance with G.S. 1-301.3 (appeals of estate proceedings). Amends G.S. 30-3.4 to provide that an elective share proceeding is an estate proceeding to be conducted under the procedures of Article 2 of G.S. Chapter 28A.
- **Year's Allowance.** Amends G.S. 30-17 regarding surviving children who are entitled to an allowance to delete reference to the term "next friend." Amends G.S. 30-23 to provide for right of appeal from an assignment of a year's allowance by filing a copy of the assignment and notice of appeal, and directs that the appeal is to be heard as provided in G.S. 1-301.2 (as in a special proceeding). Repeals the provisions of G.S. 30-24 and 30-26. Amends G.S. 30-27 to provide that a surviving spouse or child may apply to superior court after the date specified in the general notice to creditors for assignment of an amount other than prescribed in G.S. 30-15 (when spouse entitled to allowance) and G.S. 30-17 (when children entitled to an allowance). Amends G.S. 30-28 to require the application be by petition in a special proceeding before the clerk and specifies persons to be made parties to the special proceeding, including all known creditors, heirs, and devisees. Amends G.S. 30-30 to provide that the clerk is to hear the matter and determine if the petitioner is entitled to the relief sought, and that any judgment rendered in favor of the petitioner is subject to the same priority over other debts and claims against the estate as an allowance assigned under G.S. 30-15 or G.S.

30-17. Creates G.S. 30-31.1 requiring petitioner to serve the clerk's judgment on all other parties and requiring the judgment be filed in the estate file. Provides that any aggrieved party may appeal the judgment under G.S. 1-301.2 (as in a special proceeding). Creates G.S. 30-31.2 to provide that if the judgment is not appealed, it is to be executed as under G.S. Chapter 1.

- **Will Caveats.** Recodifies G.S. 31-12 through G.S. 31-31.2 as Article 2A of G.S. Chapter 28A. Amends G.S. 31-32 to declares that if any person who is entitled to file a caveat is less than 18 years, or incompetent as defined in G.S. 35A-1101(7) or (8) (was, insane or imprisoned), that person may file a caveat within three years after removal of the disability. Requires the caveat to be placed in the decedent's estate file and directs the clerk to give notice of the filing by making an entry on the page of the will book where the will is recorded that includes the date of the filing. Provides that if a will has been probated in solemn form under G.S. 28A-2A-7, any party that was properly served in that proceeding is prohibited from filing a caveat.

Amends G.S. 31-33 as follows: Directs the clerk to transfer the cause to superior court upon the filing of a caveat. Requires service of the caveat on all interested parties in accordance with Rule 4 of the Rules of Civil Procedure, after which the caveator is responsible for causing notice of hearing to be served on all parties in accordance with Rule 5 of the Rules. Provides that at the alignment hearing, all of the interested parties who wish to be aligned are to appear in court and be aligned by the court as parties with the caveator or parties with the propounders of the will. Directs the judge to dismiss from the proceeding an interested party who does not appear to be aligned or chooses not to be aligned. Deletes provisions requiring that the caveator and all interested parties who wish to be aligned by the court as parties in the action to file bond as directed by the court. Provides that the court, upon motion of an aligned party, may require a caveator to provide security in an amount determined by the court. Provides that the court is to consider relevant facts related to the need for a bond and the amount of any bond. Permits any interested party who was aligned to file a responsive pleading to caveat within 30 days following the entry of an order aligning the parties, and specifies that failure to respond to any claim or averment of the caveat is not deemed to be an admission. States that an extension of time to file a responsive pleading may be granted as provided by Rule 6 of the Rules.

Amends G.S. 31-36 to provide that decisions of the clerk regarding the use, location, and disposition of assets that cannot be resolved by the parties may be appealed to superior court pursuant to G.S. 1-301.3 (appeal of an estate proceeding).

Amends G.S. 31-37.1 to clarify that a settlement agreement entered into by the parties must be approved by the superior court and the judgment entered by the court. Provides that the consent of parties that are not aligned as prescribed in G.S. 31-33 is not necessary for a settlement agreement under this section. Requires the clerk to file a copy of the judgment entered by the superior court in a caveat proceeding in the estate file and to make an entry on the page of the will book where the will is recorded declaring that the final judgment has been entered either sustaining or setting aside the will. (This provision was previously codified in G.S. 31-37.)

- **Wills.** Amends G.S. 31B-1.2 to provide that if the fiduciary is a trustee, a proceeding for review of renunciation is governed by G.S. Chapter 36C; and, if the fiduciary is a personal representative, the proceeding is governed by G.S. Chapter 28A. Amends G.S. 32A-20(a) to provide that a health care power of attorney is effective following the death of the person granting the authority (principal) without regard to the principal's understanding or capacity when the principal was living for the purpose of exercising the authority described in G.S. 32A-19(b) (which provides that a health care power of attorney may authorize the health care agent to exercise any and all rights the principal may have with respect to anatomical gifts, the authorization of any autopsy, and the disposition of remains). Further states that the statute does not prevent a principal from revoking a health care power of attorney.
- **Trusts.** Amends G.S. 36C-2-205(d) to delete restriction that extensions of time not be granted more than once under Article 2 (Judicial Proceedings) of G.S. Chapter 36C and to provide that the court may enlarge an extension of time beyond 10 days if the court finds that justice requires that the time be extended beyond that time. Amends G.S. 36C-2-205(e) to add Rules 4, 56, and 65 to the list of Rules of Civil Procedure that apply to trust proceedings. unless the clerk directs otherwise. Provides that the clerk may direct that any or all of the remaining Rules of Civil Procedure apply, including discovery rules. Amends G.S. 36C-6-604 to provide that the notice informing a person of the existence of a trust must be written notice pursuant to Rule 14 of the Rules of Civil Procedure.

Effective January 1, 2012, and applies to estates of decedents dying on or after that date.

9. [S.L. 2011-350 \(S 487\): Attorneys authorized to deposit disputed funds.](#)

Amends G.S. 93A-12 to provide that attorneys licensed to practice law in North Carolina are permitted to deposit with the clerk of court disputed monies they receive while acting in a fiduciary capacity. The statute formerly applied only to real estate brokers. Effective October 1, 2011.

10. [S.L. 2011-400 \(S 33\): Medical malpractice and other tort changes.](#)

Amends the specific pleading requirement of Rule 9(j) of the Rules of Civil Procedure to require that complaints alleging medical malpractice (as defined by statute) shall be dismissed unless the pleading specifically asserts that the medical care and all medical records pertaining to the alleged negligence that are available to the plaintiff after reasonable inquiry have been reviewed as set forth in that rule.

Also amends Rule 42 of the Rules of Civil Procedure to require the court, upon motion of any party, to order separate trials of the issue of liability and the issue of damages in tort actions in which the plaintiff seeks damages exceeding \$150,000. Court may, for good cause shown, order a single trial. Evidence related solely to compensatory damages shall not be admissible until the trier of fact has determined liability. The same trier of fact must determine liability and damages.

Amends G.S. 90-21.11 to alter the definitions of "health care provider" and "medical malpractice action."

Amends G.S. 90-21.12, regarding the standard of health care. States that in medical malpractice actions the defendant health care provider shall not be liable for damages unless the trier of fact finds (was, "is satisfied") by the greater weight of the evidence that the provider did not meet the standard of practice among members of the same health care profession with similar training and experience situated in the same or similar communities under the same or similar circumstances at the time of the alleged act; or in the case of a medical malpractice action under the new definition in G.S. 90-21.11(2)(b), that the action or inaction of such provider was not in accordance with the standards of practice among similar health care providers situated in the same or similar communities under the same or similar circumstances at the time of the alleged act. Further provides that in any medical malpractice action arising out the furnishing or failure to furnish professional services in the treatment of an "emergency medical condition" (as defined), the claimant must prove a violation of the standards of practice by clear and convincing evidence.

Creates G.S. 90-21.19 to set out a limit on noneconomic damages in medical malpractice actions (damages for pain, suffering, emotional distress, loss of consortium, inconvenience, and any other nonpecuniary compensatory damage). In any such action in which the plaintiff is entitled to a noneconomic damages award, the total judgment amount for noneconomic damages against all defendants shall not exceed \$500,000. Judgment shall not be entered against any defendant for noneconomic damages in excess of \$500,000 for all claims brought by all parties arising out of the same professional services. If a verdict exceeds these limits, the court shall modify the judgment accordingly. The jury shall not be instructed as to these limits. These limits do not apply if the trier of fact finds both that the plaintiff suffered disfigurement, loss of use of part of the body, permanent injury or death; and that defendant's acts or failures, which are the proximate cause of plaintiff's injuries, were committed in reckless disregard of the rights of others, grossly negligent, fraudulent, intentional, or with malice. Further creates G.S. 90-21.19B to provide that a verdict or award of damages in a malpractice action shall indicate specifically what amount, if any, is awarded for noneconomic damages and provides for a jury instruction as to noneconomic damages.

Creates subsection (c) of G.S. 1-17 to make exceptions to the statute of limitations period of G.S. 1-15(c) for certain minors. Amends G.S. 1-289 to require the court to specify, after notice and hearing, the amount of an undertaking in a judgment execution. Sets forth factors for the court to consider in setting an amount that is reasonable for the security of the rights of the adverse party.

Sections 5, 6, and 9 of the act become effective October 1, 2011 and apply to causes of action arising on or after that date. The remainder of the act becomes effective October 1, 2011 and applies to actions commenced on or after that date.

Juvenile Law

Abuse, Neglect, Dependency, and Termination of Parental Right

1. **[S.L. 2011-295](#) (Makes changes to numerous provisions of Juvenile Code governing abuse, neglect and dependency)**

The act makes substantial changes to Subchapter I of the Juvenile Code, applicable to actions filed or pending on or after October 1, 2011. Among the provisions are:

- **Consent orders.** Section 5 adds new G.S. 7B-801(b1), providing that the court may enter a consent adjudication, disposition, review, or permanency planning order in an abuse, neglect, or dependency proceeding when
 - all parties are present or represented by counsel who is present and authorized to consent;
 - the juvenile is represented by counsel; and
 - the court makes sufficient findings of fact.

Section 8 of the act repeals G.S. 7B-902, the current provision regarding consent orders.

- **Adjudication.** Section 6 rewrites G.S. 7B-807(a) to make clear that stipulations by a party may constitute evidence at adjudication and to require that a record of specific stipulated adjudicatory facts be made by either (i) submitting them to the court in writing, signed by each party who is stipulating; or (ii) reading the facts into the record, followed by an oral statement of agreement from each party stipulating to them.
- **Disposition hearing.** Section 7 rewrites G.S. 7B-901 to require the court, at the disposition hearing, to inquire about the identity and location of any missing parent and whether paternity is at issue. The court must make findings about efforts to locate and serve any missing parent and to establish paternity if paternity is in issue. The court may provide in its order for specific efforts aimed at identifying and locating a missing parent or at establishing paternity. The court also must inquire about efforts made to identify and notify relatives as potential resources for placement or support.
- **Disposition order.** Section 9 rewrites G.S. 7B-905(a) to require the clerk to schedule a hearing at the first session of juvenile court if a disposition order is not entered within 30 days after completion of the disposition hearing.
- **Placement responsibility.** G.S. 7B-507(a)(4) requires that any order providing for a child to remain or be placed in DSS custody specify that the child's placement and care are DSS's responsibility and that DSS provide or arrange for the placement. Section 3 of [S.L. 2011-295](#) adds a provision that the court, after considering DSS's recommendations, may order a specific placement the court finds to be in the child's best interest.

- **Permanency planning hearing.** Section 3 rewrites G.S. 7B-507(c) to clarify the scheduling of permanency planning hearings after a court determines that reunification efforts are not required. If the determination to cease reunification efforts is made at a hearing that was properly noticed as a permanency planning hearing, the court may proceed in that hearing to consider the criteria in G.S. 7B-907, make findings of fact, and order a permanent plan for the child. If the determination to cease reunification efforts is made at any other hearing, the court must schedule a subsequent hearing within 30 days to address the permanent plan pursuant to G.S. 7B-907.
- **Termination of guardianship.** Section 4 amends G.S. 7B-600(b), so that the restrictive criteria for terminating a guardianship when the court has made guardianship the permanent plan for the child apply only if the guardian is a party to the proceeding.
- **Petitioner to send notice of termination hearings.** Section 13 amends G.S. 7B-1106(b)(5), relating to the contents of the summons in a termination of parental rights case, to provide that the petitioner, not the clerk, will mail notice of the date, time, and place of any pretrial hearing and of the hearing on the petition.
- **Extension of time to file answer or response.** Section 14 amends G.S. 7B-1108(a) to provide that only a district court judge may grant an extension of time to file an answer or response to a termination of parental rights petition or motion.
- **Unknown parent.** Section 12 rewrites G.S. 7B-1105(b) to (i) provide that the court may order the petitioner in a termination of parental rights case to conduct a diligent search for an unknown parent, and (ii) delete the provision authorizing the court to appoint a guardian ad litem to conduct a search for the unknown parent.
- **Evidence at adjudication in termination of parental rights proceeding.** Section 15 adds to G.S. 7B-1109(f) a statement that the rules of evidence in civil cases apply at the adjudicatory hearing in a termination of parental rights proceeding.
- **Evidence and findings at disposition in termination of parental rights proceeding.** Section 16 rewrites G.S. 7B-1110(a) to authorize the court at disposition in a termination proceeding to consider any evidence, including hearsay, that the court finds to be relevant, reliable, and necessary to determine the child's best interests. It also requires the court, in addition to considering statutory criteria that are relevant, to make written findings about those criteria.
- **Post-termination review.** Section 10 rewrites G.S. 7B-908 relating to post-termination of parent rights review hearings, to
 - require the court to make findings about relevant factors the court is required to consider under G.S. 7B-908(c);
 - add a requirement that the court consider whether the current placement is in the child's best interest; and

- authorize the court to order a different placement or plan if the child is not placed with prospective adoptive parents and the court has considered DSS's recommendations.
- **Selection of adoptive parents.** Section 10 deletes G.S. 7B-908(f), relating to the selection of adoptive parents, and section 18 adds new G.S. 7B-1112.1 addressing that subject. It requires DSS to notify the child's guardian ad litem of the selection of prospective adoptive parents within ten days of the selection and before an adoption petition is filed. A guardian ad litem who disagrees with the selection then has ten days to file a motion for a hearing in juvenile court. DSS may not change the child's placement to that of the prospective adoptive parents unless the time for the guardian ad litem to file a motion has passed without a motion's being filed. After a hearing and consideration of DSS's and the guardian ad litem's recommendations, the court must determine whether the proposed adoptive placement is in the child's best interest.
- **Reinstatement of parental rights.** Section 18 adds new G.S. 7B-1114 establishing for the first time a juvenile court proceeding in which the court may reinstate the parental rights of a parent whose rights have been terminated. Previously, a parent whose rights had been terminated could regain parental rights only by adopting the child. Circumstances in which the new procedure is available, beginning October 1, 2011, are narrow.
 - A motion to reinstate parental rights may be filed only by the child's guardian ad litem attorney or a DSS that has custody of the child.
 - The child must be at least 12 years old or, if the child is younger than 12, the motion must allege extraordinary circumstances requiring consideration of the motion.
 - The juvenile must not have a legal parent, must not be in an adoptive placement, and must not be likely to be adopted within a reasonable time.
 - The order terminating parental rights must have been entered at least three years before the motion is filed, unless the juvenile's attorney advocate and the DSS with custody stipulate that the child's permanent plan is no longer adoption.
 - If a motion could be filed and a parent contacts DSS or the child's guardian ad litem about reinstatement of the parent's rights, DSS or the guardian ad litem must notify the child that the child has a right to file a motion for reinstatement of parental rights. If the child does not have a guardian ad litem when a motion is filed, the court must appoint one.
 - The party filing the motion must serve it on each of the following that is not the movant: the child, the child's guardian ad litem or guardian ad litem attorney, the DSS with custody of the child, and the former parent whose rights the motion seeks to have reinstated. Although the former parent must be served, the former parent is not a party and is not entitled to appointed counsel if indigent.

- The party filing the motion must ask the clerk to calendar it for a preliminary hearing within 60 days of the filing and must give at least 15 days notice to those who were required to be served and to the child’s placement provider. (The placement provider is not made a party by virtue of receiving notice). At least seven days before the preliminary hearing, DSS and the child’s guardian ad litem must provide the court, the other parties, and the former parent with reports that address a list of factors specified in the new statute. At the preliminary hearing the court must consider those criteria and make findings about those that are relevant. At the conclusion of the hearing, the court must either dismiss the motion or order that the child’s permanent plan become reinstatement of parental rights.
 - If the motion is not dismissed at the preliminary hearing, the court must conduct hearings at least every six months until the petition is granted or dismissed, which must occur within 12 months from the date the motion was filed unless the court makes written findings about why that cannot occur and specifies a time frame for entering a final order. At any hearing under the new section the court may enter an order for visitation under G.S. 7B-905(c) or order that the child be placed in the former parent’s home and supervised by DSS. If the court orders placement in the former parent’s home, the child’s placement and care remain the responsibility of the DSS with custody.
 - After entry of an order reinstating parental rights, the court is not required to conduct further reviews. A parent whose rights are reinstated is not liable for child support or the cost of services provided to the child after the termination order and before the reinstatement order.
2. **[S.L. 2011-332](#) (Service of motion in termination of parental rights cases)**
Section 4.1 rewrites G.S. 7B-1102 to require that when a motion to terminate parental rights is served on a parent pursuant to G.S. 1A-1, Rule 4, a copy of the motion and notice be sent to the parent’s attorney if the parent has an attorney of record. This change applies to motions filed on or after October 1, 2011. (Note that section 4.2 of the act rewrites Rule 5(b) of the Rules of Civil Procedure, pursuant to which a motion to terminate parental rights may be served in some cases.)
3. **[S.L. 2011-326](#) (Appointment of provisional counsel in juvenile cases)**
Sections 12(a) and 12(b) amend G.S. 7B-602(a) and 7B-1110.1(a) to specify that the appointment of provisional counsel shall be pursuant to rules adopted by the Office of Indigent Defense Services (IDS). (Note also that section 15.20 of [S.L. 2011-145](#) amends G.S. 7A-498.5(f) to require IDS, in setting compensation rates for expert witnesses, not to exceed the rate set by the AOC under G.S. 7A-314(d).)

Delinquent Juveniles

4. **[S.L. 2011-329](#) (Recording of custodial interrogations of juveniles)**
Section 2 rewrites G.S. 15A-211, which addresses the required electronic recording of interrogations in certain criminal cases. In addition to expanding the categories of criminal cases in which custodial interrogations must be recorded, the act makes the recording requirements applicable to “all custodial interrogations of juveniles in criminal investigations

conducted at any place of detention.” The act does not define the term “juvenile.” The intent probably was to make the recording of custodial interrogations mandatory when an investigation involves an offense committed by a juvenile younger than 16 – that is, to delinquency cases. Ordinarily such a provision would be placed in G.S. Chapter 7B, which addresses other aspects of the interrogation of juveniles. It is also possible that the intent was to make the section applicable to all custodial interrogations, not just those in cases involving specified offenses, when a criminal defendant or suspect is under the age of 18. However, statutes in G.S. Chapter 15A generally do not use the term “juvenile,” and instead refer to an age or an age range when referring to someone in the criminal system who is younger than 18. The act is effective December 1, 2011, and applies to offenses committed on or after that date.

5. **[S.L. 2011-277](#) (Use of juvenile record in later criminal proceeding)**

In some criminal cases, G.S. 7B-3000(e) permits the defendant’s juvenile record of a delinquency adjudication for a felony or a Class A1 misdemeanor to be used by law enforcement, the magistrate, the court, and the prosecutor for decisions about pretrial release, plea negotiating, and plea acceptance. As rewritten by [S.L. 2011-277](#), those uses of the juvenile record are permitted if (i) the criminal case involves a felony or a Class A1 misdemeanor committed before the defendant’s 21st birthday, and (ii) the delinquency adjudication for a felony or a Class A1 misdemeanor occurred after the defendant reached age 13 (previously, within 18 months before the defendant reached age 16 or after the defendant reached age 16). The act is effective December 1, 2011, and applies to pretrial release, plea negotiating decisions, and plea acceptance decisions on or after that date.

6. **[S.L. 2011-278](#) (Consideration of juvenile record in expunction of criminal conviction)**

Section 1 adds new G.S. 15A-145.4, setting out conditions and procedures for the expunction of criminal convictions for nonviolent felonies committed before age 18. It requires the court, in considering a petition for expunction of a nonviolent felony conviction, to review the petitioner’s juvenile record and to ensure that it remains separate from adult records and is withheld from public inspection. The act is effective December 1, 2011.

7. **[S.L. 2011-248](#) (Principal’s duty to report certain offenses to law enforcement)**

G.S. 115C-288(g) requires a school principal to make a report to law enforcement if the principal has personal knowledge or actual notice from school personnel that one of the offenses listed in the statute has occurred on school property. The act rewrites the subsection to (i) expand the duty to include instances in which a principal has “a reasonable belief” that such an act has occurred; (ii) delete the provision that made violation of the duty a Class 3 misdemeanor; (iii) provide that a principal who willfully fails to make a required report to law enforcement may be subject to demotion or dismissal pursuant to G.S. 115C-325; (iv) prohibit the State Board of Education from requiring that principals report to law enforcement acts in addition to those listed in the subsection; and (v) state that nothing in the subsection shall be interpreted to interfere with school employees’ due process rights or students’ privacy rights. The act became effective June 23, 2011, and applies beginning with the 2011-2012 school year.

8. **[S.L. 2011-145](#) (Departmental consolidation)**

Section 19.1, effective January 1, 2012, creates a new Department of Public Safety by consolidating the existing Department of Juvenile Justice and Delinquency Prevention,

Department of Correction, and Department of Crime Control and Public Safety. New Article 5A of G.S. Chapter 143B establishes the new department, and numerous other statutes are amended or recodified to conform to the change.

9. [S.L. 2011-145](#) (Community college tuition waiver)

Section 8.12(a) rewrites G.S. 115D-5(b) to delete the authority of the State Board of Community Colleges to provide for the waiver of tuition and registration fees for juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention (DJJDP).

10. [S.L. 2011-145](#) (Alternatives to detention encouraged)

Section 17.6 expresses the General Assembly's intent to increase the use of community-based alternatives whenever possible and reduce reliance on detention and youth development center commitments. It directs the Department of Juvenile Justice and Delinquency Prevention and the Department of Correction to work together to increase the use of in-home monitoring as an alternative to detention for juveniles. The departments must assess monitoring needs in both the adult and juvenile systems and report their findings and recommendations by September 1, 2011.

Bills Not Enacted but Still Eligible for Consideration

- **Confidentiality of abuse/neglect reporter's identity.** [H 387](#) would add new G.S. 7B-302(a1)(1a) to provide that DSS must disclose confidential information about the identity of a reporter to any federal, state, or local government entity or its agent with a court order and may do so without a court order only if the entity or its agent demonstrates a need for the reporter's name to carry out the entity's mandated responsibilities.
- **Intake procedures in delinquency/undisciplined cases.** [H 853](#) would delete from G.S. 7B-1803(a) the requirement that each chief district court judge issue an administrative order establishing procedures for receiving delinquency and undisciplined complaints and drawing petitions.
- **Detention and holdover facility responsibilities.** [H 853](#) would rewrite G.S. 153A-221.1 to transfer from the Secretary of Health and Human Services and the Social Services Commission, to the Secretary of Juvenile Justice and Delinquency Prevention, the responsibility for (i) state services to county juvenile detention homes (including the development of state standards, inspection, consultation, technical assistance, and training); and (ii) the development of standards under which a local jail may be approved as a holdover facility for not more than five calendar days pending a juvenile's placement in a juvenile detention home that meets state standards.

Motor Vehicle Law

- 1. [S.L. 2011-35](#) (H 159), as amended by [S.L. 2011-326](#) (S 148), s. 28 (DMV authorized to note military veteran status on driver's license)**

New G.S. 20-7(q1) requires DMV to develop a military designation for driver's licenses and identification cards for North Carolina residents who are honorably discharged from military service in the U.S. Armed Forces. This designation is available upon request by a military veteran, who must produce a Form DD-214 showing that he or she was honorably discharged from the U.S. Armed Forces. Effective when DMV completes implementation of the Next Generation Secure License System or July 1, 2012, whichever occurs first, for licenses issued on or after that date.
- 2. [S.L. 2011-64](#) (S 49) (Imposes \$250 fine for speeding in school zone or on school property)**

Amends G.S. 20-141.1 and G.S. 20-141(e1) to require that persons found responsible for the infraction of speeding in a school zone or on school property pay a penalty of \$250. Effective for offenses committed on or after August 25, 2011. Previously, persons found responsible for such infractions were required to pay a penalty of not less than \$25.
- 3. [S.L. 2011-68](#) (H 407) (Permits persons 18 and older to drive ATVs off-road without a helmet)**

Amends G.S. 20-171.19 to permit persons who are at least eighteen years old to drive an all-terrain vehicle (ATV) off-road (that is, in an area that is not a public street or public vehicular area) without eye protection or a helmet. G.S. 20-171.19(a) continues to require that all persons (regardless of age) who operate an ATV on a public street or public vehicular area must wear eye protection and a safety helmet. Recodifies former subsection (a1) as (a2) and makes conforming amendments to reflect that differing head protection equipment requirements apply to persons under 18 years of age who are employed by a supplier of retail electric service. Also makes conforming amendments to G.S. 20-171.22(c). Effective October 1, 2011 for offenses committed on or after that date.
- 4. [S.L. 2011-95](#) (H 222) (Plug-in electric vehicles defined and exempted from HOV lane restrictions and emissions inspections)**

Enacts G.S. 20-4.01(28a), defining a "plug-in electric vehicle." Amends G.S. 20-146.2 to provide that high occupancy vehicle (HOV) lane restrictions (which generally are reserved for vehicles with a specified number of passengers) do not apply to plug-in electric vehicles, regardless of the number of passengers in the vehicle provided that those vehicles are able to travel at the posted speed limit while operating in the HOV lane. Enacts G.S. 20-183.2(b)(9) exempting plug-in electric vehicles from emissions inspections. Effective May 26, 2011.
- 5. [S.L. 2011-119](#) (S 16) (Misdemeanor death by vehicle rendered an implied consent offense)**

Broadens the definition of "implied-consent offense" in G.S. 20-16.2(a1) to include the offense of misdemeanor death by vehicle in violation of G.S. 20-141.4(a2). Amends the subsequent testing provision in G.S. 20-139.1(b5) to provide that a person charged with any of the death or injury by vehicle offenses set forth in G.S. 20-141.4 "shall be requested to provide a blood sample in addition to or in lieu of a chemical analysis of the breath." Specifies that the request for a blood sample is not required if the breath sample shows an

alcohol concentration of 0.08 or more. Amended G.S. 20-139.1(b5) further requires a law enforcement officer to seek a warrant to obtain a blood sample if a person willfully refuses to provide a blood sample under this subsection, the person is charged with a violation of G.S. 20-141.4, and the officer has probable cause to believe that the offense involved impaired driving or was an alcohol-related offenses made subject to the implied consent procedures. Effective December 1, 2011 for offenses committed on or after that date. For further discussion of this act, see Shea Denning, [Requests for Blood in Death by Vehicle Cases](#), posting to North Carolina Criminal Law: UNC School of Government Blog (June 22, 2011).

6. **S.L. 2011-145 (H 200), as amended by section 7(a) of S.L. 2011-192 (H 642) (Directs study of fines for infractions and waivable offenses, amends requirements for giving license holders notice of a violation charged by DMV as a result of an audit, amends provisions governing driver education courses in public high schools, enacts \$50 court costs for improper equipment convictions, and authorizes DMV to disclose data for non-official uses)**

Section 15.9 of S.L. 2011-145 (the Appropriations Act of 2011) directs the Revenue Laws Study Committee to study the penalties and fines for infractions and waivable offenses and determine whether the current amounts are appropriate. The committee must report its findings and any recommended legislation to the General Assembly upon the convening of the 2012 session.

Section 28.23B of S.L. 2011-145 (the Appropriations Act) amends G.S. 20-183.8F to eliminate requirement that a DMV auditor inform license holders upon finding a violation that could be charged by DMV. Requires notice only upon DMV's issuance of charges. Amends G.S. 20-183.8F(d) to permit DMV to deliver notice by certified mail or hand delivery. Amends G.S. 20-183.8G to require that DMV hold a requested hearing on such charges within 30 days (was, 10 business days) of receiving a request.

Section 28.24 requires DMV to lead a study examining exempting from emissions inspections two categories of vehicles: (1) vehicles in the three newest model years; and (2) all vehicles. Requires the Department of Environment and Natural Resources, Division of Air Quality, in coordination with DMV to evaluate the impact of such exemptions on emissions level and air quality. Requires a report on the results of the study and recommendations to designated committees of the General Assembly by March 1, 2012.

Section 28.37 amends provisions governing driver education courses offered by public high schools. High schools must use the standardized curriculum for such courses provided by the Department of Public Instruction (DPI). Prohibits use of state funds for the 2011-12 school year for any driver education programs that do not use the standard DPI curriculum. Eliminates provisions of G.S. 20-88.1(a), which formerly set forth curriculum requirements for driver education courses. Makes conforming changes to G.S. 20-11 and G.S. 20-322. Requires the State Board of Education to establish a pilot program to deliver driver education by electronic means and to report on the implementation of the program and the most cost-effective method of delivering driver education by June 15, 2012.

Section 31.26(c) enacts new G.S. 7A-304(a)(4b) imposing a cost of \$50 "for all offenses arising under Chapter 20 of the General Statutes and resulting in a conviction of an

improper equipment offense.” The cost, which is imposed to provide for contractual services to reduce county jail populations, is effective for convictions on or after August 1, 2011 and must be remitted to the Statewide Misdemeanor Confinement Fund in the Department of Correction.

Section 31.29 enacts new G.S. 20-43.1(e) authorizing DMV to disclose specified data for non-official use upon payment of 3 cents per record.

7. [S.L. 2011-191](#) (H 49) (Creates new Level A1 DWI, punishable by up to 3 years imprisonment)

This act, frequently referred to as “Laura’s Law”—the short title of the bill that ultimately was enacted—increases the maximum punishment for impaired driving, increases the length of time that continuous alcohol monitoring may be required as a condition of probation, and makes other changes applicable to defendants charged with and sentenced for impaired driving. The act is effective for offenses committed on or after December 1, 2011. S.L. 2011-191 requires Aggravated Level One punishment when there are at least three grossly aggravating factors in an impaired driving case sentenced under G.S. 20-179. An impaired driving conviction punished at Aggravated Level One (Level A1 DWI) requires a minimum term of 12 months imprisonment up to a maximum term of 36 months. The maximum fine is \$10,000. A defendant sentenced for a Level A1 DWI is not eligible for parole. Level A1 defendants must, however, be released from imprisonment four months before the end of the “maximum imposed term of imprisonment” and must be placed on post-release supervision with a requirement that they abstain from alcohol during this four-month period as verified by a continuous alcohol monitoring system.

The term of imprisonment for a Level A1 DWI may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 120 days. Note that this term of special probation imprisonment is significantly shorter than the mandatory minimum active term of 12 months. In this respect, Level A1 punishment departs from the sentencing requirements for other levels of impaired driving for which the mandatory minimum term of imprisonment matches the minimum term of imprisonment required as a condition of special probation. If a Level A1 defendant is placed on probation, the judge must require the defendant to abstain from alcohol for at least 120 days up to the entire term of probation as verified by CAM. As is the case for probationary sentences imposed for other levels of DWI, the judge must require as a condition of probation for a Level A1 sentence that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6. Upon conviction of Level A1 impaired driving, the defendant’s driver’s license is permanently revoked pursuant to amended G.S. 20-19(e). Though a license permanently revoked under G.S. 20-19(e) may, under certain circumstances, be conditionally restored after it has been revoked for three years, a person whose license was revoked for conviction of Level A1 DWI must, in addition to meeting other conditions, have ignition interlock in order to have his or her license restored.

S.L. 2011-191 affects other types of DWI sentencing as well. Amended G.S. 20-179(h1) increases from 60 days to the term of probation the maximum period for which abstinence from alcohol and CAM may be required of defendants sentenced for Level 1 or Level 2 DWIs.

It also eliminates the provision in G.S. 20-179(h1) that formerly capped a defendant's total CAM costs at \$1,000, and repeals G.S. 20-179(h2), which formerly prohibited a court from requiring CAM if it determined the defendant "should not be required to pay the costs" of CAM and the local government entity responsible for the incarceration of the defendant was unwilling to pay for CAM.

Amended G.S. 15A-534(i) authorizes abstinence from alcohol and CAM as a pretrial release condition for a defendant charged with an offense involving impaired driving who has been convicted of an offense involving impaired driving within seven years of the offense for which the defendant is being placed on pretrial release.

New G.S. 7A-304(a)(10) requires that a defendant sentenced pursuant to G.S. 20-179 (applicable to convictions under G.S. 20-138.1, 20-138.2 and second or subsequent convictions under G.S. 20-138.2A and 20-138.2B) pay, in addition to other applicable costs, a fee of \$100.

8. [S.L. 2011-216 \(H 381\)](#) (Patterns for checkpoint stops may not be based on type of vehicle, with exception of commercial motor vehicles)

G.S. 20-16.3A requires that checkpoints established to determine compliance with the state's motor vehicle laws be carried out pursuant to a written policy that provides guidelines for the pattern for stopping vehicles and for requesting stopped drivers to produce driver's license, registration or insurance information. The pattern must be designated in advance but does not itself have to be in writing. S.L. 2011-216 enacts new G.S. 20-16.3A(a1), which provides that the pattern must not be based on a particular vehicle type, except that the pattern may designate any type of commercial motor vehicle as defined in G.S. 20-4.01(3d). Subsection (a1) specifies that this subsection applies only to checkpoints established to determine compliance with the state's motor vehicle laws. Effective December 1, 2011 for offenses committed on or after that date.

9. [S.L. 2011-244 \(H 311\)](#) (Motor carriers of household goods must mark vehicles with name and carrier number)

Enacts new G.S. 20-398 prohibiting a carrier from operating a motor vehicle upon a highway, public street, or public vehicular area in the transportation of household goods for compensation unless the name or trade name and the North Carolina number assigned to the carrier by the state Utilities Commission appear in designated places on the vehicle in letters and numbers at least three inches high. Exempts carriers involved only in interstate commerce and requires that a carrier involved in interstate and intrastate commerce print his or her North Carolina number in a conspicuous place near his or her name in letters and figures corresponding in size with Federal Motor Carrier Safety Administration regulations.

Provides that violation of G.S. 20-398 is a Class 3 misdemeanor punishable by a fine only of not more than \$500 for the first offense and not more than \$2,000 for any subsequent offense.

Enacts new G.S. 62-280 prohibiting a carrier from violating the provisions of G.S. 20-398 and permitting the Utilities Commission to assess a civil penalty of up to \$5,000 for a violation. Requires that clear proceeds of any civil penalties collected be remitted to Civil Penalty and Forfeiture Fund. Also enacts G.S. 62-280.1 making it unlawful for a person to falsely

represent that he or she holds a certificate or otherwise is authorized to operate as a carrier of household goods. Violation is a Class 3 misdemeanor punishable by a fine only of not more than \$500 for the first offense and not more than \$2,000 for any subsequent offense. Permits the Utilities Commission to assess a civil penalty of up to \$5,000 for a violation. Provides that clear proceeds of any civil penalties are payable to the civil penalty and forfeiture fund. Effective October 1, 2011.

10. [S.L. 2011-271](#) (H 427) (Seizure and forfeiture of motor vehicles used in the commission of felony speeding to elude)

Enacts new G.S. 20-141.5(g)-(j) requiring, upon arrest of a defendant for felony speeding to elude, that the law enforcement agency seize the motor vehicle and deliver it to the sheriff of the county in which the offense is committed. Provides for constructive possession by sheriff if delivery of actual possession is impracticable. Requires that the sheriff hold the vehicle pending trial of the operator(s) charged with the felony offense. The sheriff must restore the seized motor vehicle to its owner upon execution of a satisfactory bond in double the value of the property and conditioned upon the owner's return of the motor vehicle on the day of trial. Upon acquittal or dismissal of any felony charge, the sheriff must return the motor vehicle to its owner. If the operator is convicted, the court must order the motor vehicle sold at public auction. Liens are paid from net proceeds of sale, after deducting towing and storage expenses, seizure fee, and sale costs. The balance of the proceeds are payable to the county schools.

On petition by a lienholder, the court in its discretion may allow the vehicle to be reclaimed by the lienholder. The lienholder must file with the court an accounting of the proceeds of any subsequent sale of the vehicle and must pay into the court any proceeds received in excess of the lien.

Certain other owners also may prevent the motor vehicle from being sold. A court must restore a motor vehicle to its owner if the owner demonstrates the following three factors: (1) the defendant was an immediate member of the owner's family at the time of the offense; (2) the defendant had no previous convictions or previous or pending violations of any provision in Chapter 20 of the General Statutes for the three years before the offense; and (3) the defendant was under the age of 19 at the time of the offense. The owner is entitled to trial by jury on these issues.

The owner of a motor vehicle driven by someone else in the commission of felony speeding to elude also may seek release of the motor vehicle by filing a petition with the clerk of court seeking a pretrial determination that he or she is an innocent owner. While the term "innocent owner" is defined in G.S. 20-28.2(a1)(2) for purposes of motor vehicles seized from impaired drivers, the term is not separately defined for purposes of felony speeding to elude seizures. Moreover, the requirements for an innocent owner under G.S. 20-28.2(a1)(2) correspond to the statutory bases for seizure under the impaired driving laws, which differ from those for felony speeding to elude. Thus, it is unclear how a motor vehicle owner establishes his or her status as an innocent owner pursuant to G.S. 20-141.5(h)(4). The clerk determines only whether the petitioner is an innocent owner, not whether the vehicle is subject to forfeiture. If the clerk determines that the petitioner is an innocent owner, then the clerk must release the vehicle to the petitioner. A determination by the

clerk that the petitioner failed to establish that he or she is an innocent owner may be reconsidered by the court as part of the forfeiture hearing.

When a seized motor vehicle has been specially equipped or modified to increase its speed, the court must, before its sale, order that the special equipment or modification be removed and destroyed and the vehicle restored to its original manufactured condition. If the court finds that the equipment and modifications are so extensive that restoration of the vehicle to its original manufactured condition would be impractical, it may order that the vehicle be turned over to a governmental agency or public official within the territorial jurisdiction of the court to be used in the performance of official duties only. Effective December 1, 2011 for offenses committed on or after that date.

11. [S.L. 2011-329](#) (S 241) (Requires Level One DWI sentence if a minor or disabled person was in vehicle at time of offense)

This act amends G.S. 20-179 to require, effective for offenses committed December 1, 2011 or later, that persons convicted of covered impaired driving offenses be sentenced to Level One punishment if the grossly aggravating factor in G.S. 20-179(c)(4) exists. Before these amendments, a person could be sentenced at Level One upon a finding of at least two grossly aggravating factors. This factor formerly applied if the defendant drove while a child under the age of sixteen was in the car. The act also amends the factor itself for offenses committed December 1, 2011 or later. The amended factor applies if the defendant drives while impaired with any of the following types of persons in the car: a child under the age of 18 (was, 16), a person with the mental development of a child under the age of 18, or a person with a physical disability that prevents the person from getting out of the vehicle without assistance.

12. [S.L. 2011-361](#) (H 113) (Increases penalty for unsafe movement affecting motorcycle drivers)

G.S. 20-154(a) requires a driver, before starting, stopping, or turning from a direct line to first see that the movement can be safely made. When another driver may be affected by such a movement, the moving driver must provide the appropriate signal. Violation of this provision, commonly referred to as "unsafe movement," is an infraction punishable by a penalty of up to \$100. *See* G.S. 20-176. S.L. 2011-361 enacts new G.S. 20-154(a1), increasing the penalty for a violation of G.S. 20-154(a) that "causes a motorcycle operator to change travel lanes or leave that portion of a public street or highway designated as travel lanes." Unsafe movement that so affects a motorcycle driver remains an infraction, but the fine imposed must be least \$200. If the unsafe movement in violation of G.S. 20-154(a) results in a crash causing property damage or personal injury to a motorcycle driver or passenger, the offense is an infraction requiring a fine of at least \$500. Effective December 1, 2011 for offenses committed on or after that date.

13. [S.L. 2011-381](#) (H 761) (Renders tampering with an ignition interlock system a misdemeanor offense; removes colored border requirements for licenses; specifies that violations for false documents apply to special identification cards; authorizes DMV to obtain criminal history record of applicant for a restoration of a revoked driver's license)

Enacts new G.S. 20-17.8A, which makes it a Class 1 misdemeanor to tamper with, circumvent, or attempt to circumvent an ignition interlock device required to be installed on a motor vehicle pursuant to judicial order, statute, or as may be otherwise required as a

condition for a person to operate a motor vehicle for the purpose of avoiding or altering testing on the ignition interlock device in the operation or attempted operation of a vehicle, or altering the testing results on the ignition interlock device. Each act of tampering, circumvention or attempted circumvention is a separate violation. Effective December 1, 2011 for offenses committed on or after that date.

Amends G.S. 20-7(n) to eliminate requirement that driver's licenses for persons under 21 years old and those over 21 years old have a different color background or border. Licenses and special identification cards issued to persons under 21 years of age still must be printed in a vertical format that distinguishes them from licenses and cards issued to applicants 21 and older, which are printed in a horizontal format. Also amends G.S. 20-11(a) to remove requirement that learner's permits and provisional licenses have a color background or border that indicates the level of driving privileges granted. Permit or license still must indicate level of driving privileges granted. Effective December 1, 2011 for licenses issued on or after that date.

Amends G.S. 20-30 to prohibit falsehoods related to special identification cards in the same manner as for driver's licenses and learner's permits. Effective December 1, 2011 for offenses committed on or after that date.

Enacts new G.S. 114-19.31 authorizing the Department of Justice (DOJ) to provide to DMV the criminal history record of any applicant for a restoration of revoked driver's license. Requires DMV to submit a request to DOJ accompanied by the applicant's fingerprints and a signed consent. Requires DMV to keep criminal history information obtained pursuant to this section confidential. Permits DOJ to charge a fee to offset its cost for the record check, and permits fees and costs incurred by DMV in obtaining the record to be charged to the applicant. Effective December 1, 2011.

14. [S.L. 2011-385 \(S 636\)](#), as amended by [S.L. 2011-412 \(H 335\)](#) (Driving logs required for provisional license; immediate civil license revocations required for provisional licensees who commit criminal moving violations**)**

Under current law, a person who is at least 16 years old but less than 18 years old may obtain a limited provisional license if he or she meets the following four requirements: (1) has held a limited learner's permit issued by DMV for at least 12 months, (2) has not been convicted of a motor vehicle moving violation or seat belt infraction or a violation of G.S. 20-137.3 (unlawful use of a mobile phone by a person under 18) in the previous six months, (3) passes a road test administered by DMV, and (4) has a driving eligibility certificate or a high school diploma or its equivalent. For persons issued a limited learner's permit on or after January 1, 2012, amendments to G.S. 20-11(d) create a fifth requirement. To obtain a limited provisional license, a person must complete a driving log, on a form approved by DMV, detailing a minimum of 60 hours as the operator of a motor vehicle of the class for which the driver has been issued a limited learner's permit. The log must show at least 10 hours of the required driving occurred during nighttime hours. No more than 10 hours of driving per week may be counted. The driving log must be signed by the supervising driver and be submitted to DMV when the applicant seeks the limited provisional license. If DMV has cause to believe that a driving log has been falsified, the limited learner's permit holder must complete a new driving log and is not eligible to obtain a limited provisional license for six months.

A limited provisional license authorizes the license holder to drive a specified type or class of motor vehicle only under certain conditions. Among those conditions is that the driver may drive without supervision only from 5:00 a.m. to 9:00 p.m. or when driving to or from work or to or from an activity of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service, if the driver is a member of the organization. See G.S. 20-11(e)(2). This act amends G.S. 20-11(e)(2) for persons issued a limited provisional license on or after October 1, 2011 to allow unsupervised driving after 9 p.m. and before 5 a.m. only when driving “directly” to one of the aforementioned excepted activities.

Amendments to G.S. 20-11(f), applicable to persons issued a limited provisional license on or after January 1, 2012, also require a driving log to obtain a full provisional license. The log must detail a minimum of 12 hours as the operator of a motor vehicle of a class for which the driver is licensed. The log must show at least six hours of the required driving occurred during nighttime hours. The driving log must be signed by the supervising driver for any hours driven outside of the provisions in G.S. 20-11(e)(2)(allowing unsupervised driving without supervision from 5 a.m. to 9 p.m., subject to certain work-related exceptions) and must be submitted to DMV when the applicant seeks his or her full provisional license. If DMV has cause to believe the log is false, the limited provisional licensee must complete a new log and is ineligible for a full provisional license for six months.

Effective January 1, 2012 for offenses committed on or after that date, new G.S. 13-3 provides for the immediate revocation of the license of a provisional licensee charged with a misdemeanor or felony motor vehicle offense that is defined as a criminal moving violation. If a law enforcement officer has reasonable grounds to believe that a person under the age of 18 who has a limited learner’s permit or a provisional license has committed a criminal moving violation, the person is charged with that violation, and the person’s license is not subject to civil revocation for a violation of the implied consent laws, the law enforcement officer must execute a revocation report and take the provisional licensee before a judicial official for an initial appearance. The revocation report must be filed with the judicial official (typically, a magistrate) conducting the initial appearance on the underlying criminal moving violation. If a properly executed report is filed with a judicial official when the person is present before the judicial official, the judicial official must, after completing any other proceedings, determine whether there is probable cause to believe the conditions requiring civil license revocation pursuant to G.S. 20-13.3(b) are met. If the judicial official finds probable cause, he or she must enter an order revoking the provisional licensee’s permit or license for 30 days. The provisional licensee is not required to surrender his or her permit or license card. The clerk must notify DMV of the issuance of a G.S. 20-13.3 revocation order within two business days. A person whose license is revoked under G.S. 20-13.3 is not eligible for a limited driving privilege.

DMV is directed to study the issue of teen driving and the effectiveness of the provisions of SL 2011-385. DMV specifically must determine whether, beginning October 1, 2011, there has been a decrease in any of the following types of incidents involving provisional licensees: property damage crashes, personal injury crashes, fatal crashes, moving violations, and seat belt violations. DMV must report its findings to the Joint Legislative Transportation Oversight Committee by February 1, 2014.

15. [S.L. 2011-392](#) (H 289) (Authorizes DMV to issue various special registration plates, directs DMV to develop standard format for special plates, orders study of how special plates impact effective law enforcement)

Amends G.S. 20-63(b) and denominates new subsection (b1) authorizing DMV to issue several new types of special registration plates that are not required to be "First in Flight" registration plates. Enacts new G.S. 20-79.4(a3) requiring DMV to develop, in consultation with the State Highway Patrol and Department of Correction, a standardized format for special license plates that allows "the license plate number to be easily read by the human eye and by cameras installed along roadways as part of tolling and speed enforcement." The new provision requires that an area of the plate be designated for the unique designs of the various groups and interests represented. Existing special plates will not be recalled pursuant to new G.S. 20-79.4(a3), but special plates issued by DMV on or after July 1, 2015 must be in a standardized format. Amends G.S. 20-81.12 and 20-79.4 to require DMV, upon receipt of designated number of applications to develop and issue additional types of special registration plates and amends G.S. 20-79.7(a) to set forth schedules for fees charged for those plates. Enacts new G.S. 20-79.8, effective July 1, 2011, providing that a special registration plate authorized pursuant to G.S. 20-79.4 expires on July 1 of the second calendar year in which it was authorized if the number of required applications for the authorized special plate has not been received by DMV. Also provides for expiration of special plates authorized in G.S. 20-79.7 if insufficient applications to produce plate are received by July 1, 2013. Directs Department of Crime Control and Public Safety and the Department of Transportation to study whether, for purposes of effective law enforcement, full-color special license plates should continued to be authorized or be phased out with all special license plates being on the First in Flight background. Department must report their findings and recommendations to the Joint Legislative Transportation Oversight Committee on or before the convening of the 2012 Regular Session of the 2011 General Assembly.

Judicial Authority & Administration

1. [S.L. 2011-28](#) (High Point bar councilor; court vacancies in District 18)

G.S. 84-19 is amended to provide that superior court district 18B, consisting primarily of High Point precincts, is a separate judicial district for selection of State Bar councilors. Also amended is G.S. 7A-142, the statute concerning district court vacancies, to specify that all bar members in district court district 18 (Guilford County) are to participate in nominating a replacement. Effective April 7, 2011.

2. [S.L. 2011-42](#) (Juror qualifications, exemption for disability)

G.S. 9-3 is amended to (a) eliminate the requirement that a person must hear English language to qualify for jury service, leaving the requirement that the person must understand English; (b) specify that request for jury exemption by someone 72 or older must be filed five business days in advance of the jury summons date; and (c) add new provisions for a person with a disability to request exemption from jury service, by submitting a written request five business days before jury summons date. The court may require medical documentation of the disability. Effective July 1, 2011.

3. [S.L. 2011-145](#) (State budget) and [S.L. 2011-391](#) (State budget corrections)

In addition to the reduction in court funding the 2011 state budget bill included various other provisions affecting the operation of the courts. Among the provisions are:

- A new Study Committee on Consolidation of Judicial and Prosecutorial Districts is to study the number and structure of judicial and prosecutorial districts and recommend reductions in the number of districts to increase efficiency and improve the quality of justice. The recommendations to the 2012 session are to provide for identical judicial and prosecutorial districts where feasible. The committee is to consist of four senators appointed by the President Pro Tem, four representative appointed by the Speaker, and two others who are knowledgeable about operation of district attorneys' office, one each appointed by the President Pro Tem and Speaker.
- The School of Government is to study the feasibility and cost of creating an Office of Prosecutorial Services as an independent agency within the judicial branch. The report is to be made to the appropriations subcommittees on Justice and Public Safety by April 1, 2012.
- The AOC is to contract with the National Center for State Courts to develop a workload formula for superior court judges. The results of the formula are to be submitted to the appropriations subcommittees on Justice and Public Safety by December 1, 2011. Meanwhile, G.S. 7A-109 is amended to require the clerk's minutes to record the opening and closing time of each session of court, plus the times of recesses. Those time records are to be provided monthly by the AOC to the National Center for State Courts, the legislature's Fiscal Research Division, and the new Study Committee on Consolidation of Judicial and Prosecutorial Districts.
- The Revenue Laws Study Committee is to study whether the current penalties for infractions and waivable offenses are at an appropriate level, with a report to the 2012 session.
- The AOC is to develop protocols to offer regular administrative court sessions in each district court district to hear motor vehicle infractions, and each district is to offer such sessions by October 1, 2011.
- G.S. 7A-304(a) is amended to prohibit waiver of costs in criminal cases unless the judge finds in writing just cause for the waiver. The AOC is to report on waivers to the Joint Legislative Commission on Governmental Operations each October 1st.
- G.S. 7A-102(a) is amended to provide that each clerk's office shall have a minimum of five staff positions in addition to the elected clerk.
- The AOC is allowed to set a lower per-mile travel reimbursement rate during the fiscal 2011-13 biennium than the standard mileage rate set by the Internal Revenue Service.
- Judicial department salaries remain frozen for the biennium. The elected clerk of court's salary is not to increase even if the county moves up from one population category to another.
- Numerous court fees were increased significantly, including the General Court of Justice fee. That fee goes from \$100.50 to \$129.50 in district court and from \$102.50 to \$154.50 in superior court for criminal actions. For civil cases the fee goes from \$55 to \$80 in small claim actions, from \$80 to \$130 in district court, and \$125 to \$180 in superior court. Filing fees are made applicable to counter-claims and cross-claims in civil actions, and a \$20 fee is added for filing a motion, with various exceptions. General Court of Justice fees increase also for special proceedings and estates matters, with other increases applying to a variety of miscellaneous fees such as, for example, a doubling of the previous \$150 foreclosure fee.

- Community mediation centers will no longer receive funding through the AOC but now may charge for their services. Generally those charges will be paid directly to the mediation center and not go through the clerk's office. Under G.S. 7A-38.7, though, when a criminal case is resolved through a community mediation center there has been a \$60 fee assessed and collected by the court; instead of going to court support that fee now will be paid to the center that mediated the case via the Mediation Network which itself will get to keep up to three dollars for its administrative expenses.
- Fees related to local jail confinement under the Justice Reinvestment Act are discussed in the summary of S.L. 2011-192 under the Criminal Law and Procedure section of this summary.

4. [S.L. 2011-203](#) (Wake superior court districts)

In response to the decision in *Blankenship v. Bartlett*, 363 NC 518 (2009), that the populations of the superior court election districts in Wake County were so far out of balance as to violate equal protection, the General Assembly redrew the districts effective January 1, 2013, with the new lines applicable to the 2012 election. The legislation specifies six single-judge districts and assigns the incumbent judges to those districts.

5. [S.L. 2011-283](#) (Medical expenses, expert testimony, attorneys fees, trespasser responsibility)

Labeled "An Act to Provide Tort Reform for North Carolina Citizens and Businesses," the bill makes several changes in the handling of civil cases, applicable to actions arising on or after October 1, 2011 (see [S.L. 2011-317](#) for the final version of the effective date):

- The bill rewrites Rule 414 of the Rules of Evidence to specify that evidence of medical expenses is to be the actual amount paid or actual amount needed to satisfy the bill. It also amends G.S. 8-58.1 to allow use of a provider's testimony to rebut the presumption that the amount billed is that actual amount to be paid.
- G.S. 8C-702 is rewritten to specify that an expert's testimony must be based on sufficient facts or data and must be the product of reliable principles and methods applied reliably by the expert.
- G.S. 6-21.1 is amended to say that attorney's fees may be awarded when the defendant unreasonably refuses to negotiate or pay the claim; the damages recovered are \$20,000 or less (was \$10,000 or less); and the damages exceed the highest offer made by defendant in the last 90 days before trial. The attorney's fees are limited to \$10,000 and the judge is required to make written findings of fact to support the award.
- The bill adds a new Chapter 38B entitled "Trespasser Responsibility." The new chapter states the general rule that a landowner or occupant owes no duty to and is not liable for injury to a trespasser. A variety of exceptions are then described, allowing liability, for example, when the occupant intentionally harms the trespasser or when the trespasser is a child under 14 who is harmed by an artificial condition, the occupant should have known children were likely to trespass, the occupant should have known of the likely harm to a child, and so forth.

6. [S.L. 2011-285](#) (No sealing fee for indigent)

Effective July 1, 2011, G.S. 7A-308(b1) is amended to add certificates under seal to the fees from which lawyers representing indigents are exempted.

7. [S.L. 2011-323](#) (AOC collection fees)

Effective July 1, 2011, and applicable to cases adjudicated on or after that date, G.S. 7A-321 is amended to include city and county governments in the agencies with which the AOC may contract to collect unpaid fines and fees, and to provide that such contracts may allow the collecting agency to keep the add-on collection assistance fee. The bill also allows such collection contracts to be used for collecting restitution.

8. [S.L. 2011-398](#) (Administrative appeals, rulemaking)

For judicial officials, the most significant of the numerous changes to Chapter 150B (Administrative Procedure Act) and related statutes is to give administrative law judges (ALJ) authority to make final decisions in contested cases rather than sending a recommended decision back to the agency. Judicial review of final decisions will become simpler, therefore, in that the court will be reviewing only the ALJ's decision and will not have to go through the more complicated analysis that was required when the agency rejected the ALJ's recommended decision. The provisions on ALJs making final decisions apply to contested cases begun January 1, 2012, or later.

Most of the other changes concern the rulemaking process to be followed by agencies, starting October 1, 2011. Among the changes are new admonitions about avoiding unnecessary and duplicative rules; a requirement that each agency review its rules annually; more stringent requirements on estimating the costs and benefits of proposed rules, including a requirement that the agency consider at least two alternatives if a proposed rule would have an economic impact of \$500,000 a year or more; and directions to put proposed rules, fiscal notes, etc. on the agency website. The act also amends various statutes to generally prohibit environmental rules that are stricter than federal requirements.