

## 2012 Legislation in a Nutshell: Criminal Law and Procedure

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The General Assembly passed dozens of bills concerning criminal law and procedure in the 2012 legislative session. This document summarizes several of the most significant.

- **Increased Penalties for Some Second-Degree Murders.** Second-degree murder is currently a Class B2 felony. A first offender sentenced as a Class B2 felon in the presumptive range is likely to serve somewhere between 11 and 14 years in prison. Apparently concerned that such a sentence is too lenient, the General Assembly enacted [S.L. 2012-165](#), which increases second-degree murder to a Class B1 felony, resulting in typical sentences about 50% longer than current law. However, the act excepts second-degree murders in which malice is based on recklessness (such as DWI homicides), as well as second-degree murders based on the distribution of drugs. Such murders remain Class B2 offenses. The act is effective December 1, 2012, for offenses committed on or after that date. A more detailed discussion of the act can be found [here](#) on the North Carolina Criminal Law Blog.
- **New Sentencing Procedure for Juveniles Convicted of First-Degree Murder.** On June 25, 2012, the United States Supreme Court decided [Miller v. Alabama](#), summarized [here](#) on the North Carolina Criminal Law Blog, holding that the Eighth Amendment prohibits the automatic sentencing of juvenile murderers to life without parole. (The Court previously ruled that juvenile offenders may not be sentenced to death.) Because North Carolina law provided that life without parole was the sole punishment for juveniles convicted of first-degree murder, the law violated *Miller*. The General Assembly responded quickly. Barely a week after *Miller*, it passed [S.L. 2012-148](#), designed to bring the state into *Miller* compliance. Under the bill, when a defendant is convicted of first-degree murder based on a crime committed before the defendant turned 18, the trial judge must conduct a sentencing hearing. If the defendant was convicted solely under the theory of felony murder, he must be sentenced to life with the possibility of parole after 25 years. If he was convicted under another theory, such as premeditation and deliberation, the court must consider mitigating factors such as the defendant's age and immaturity before deciding whether to impose life with the possibility of parole after 25 years, or life without parole. The act became effective on July 12, 2012, when it was signed by the Governor. It also applies to any resentencings conducted in eligible cases. However, the act does not itself require that any resentencings be conducted.
- **Racial Justice Act Amendments.** In [S.L. 2012-136](#), the General Assembly, over the Governor's veto, substantially revised the Racial Justice Act, G.S. 15A-2010 *et seq.* Among other changes, the bill (1) appears to require that the defendant show that race played a role in the defendant's case, not merely in capital cases generally in the county, prosecutorial district, judicial division, or state (though another section of the bill appears to suggest that evidence of discrimination at the level of the county or prosecutorial district might be sufficient); (2) limits the relevant time period to 10 years before the defendant's crime to two years after the defendant's death sentence; (3) removes race-of-victim discrimination as a basis for a claim under the Act; (4) provides that while statistical evidence of discrimination may be considered, such evidence "alone is insufficient"; and (5) provides that "[a] capital defendant who filed a trial motion alleging discrimination, or a motion for appropriate relief alleging discrimination . . . is not entitled or authorized to file any additional motions for appropriate relief based upon this act." The bill states that it is effective immediately and applies to all cases filed but not yet decided under the former version of the Racial Justice Act, i.e., to all cases other than the Marcus

Robinson case in Cumberland County. However, the constitutionality of that provision is likely to be the subject of litigation.

- **New Terrorism Offense.** In [S.L. 2012-38](#), the General Assembly created the criminal offense of terrorism. A person commits the offense if he commits an act of violence with the intent to “[i]ntimidate the civilian population at large, or an identifiable group of the civilian population” or “[i]nfluence, through intimidation, the conduct or activities of the government of the United States, a state, or any unit of local government.” Terrorism is a separate offense, usually punishable one class higher than the underlying act of violence. The act is effective December 1, 2012, for offenses committed on or after that date. A more detailed exposition of the crime can be found [here](#), on the North Carolina Criminal Law blog.
- **Theft of Metals.** The price of many metals has been very high recently, leading to increased thefts of metals such as manhole covers and copper air conditioning coils. The General Assembly addressed this problem in [S.L. 2012-46](#). The act regulates metal purchasers, particularly purchasers of “nonferrous” metals such as copper. It requires them to obtain a permit from the sheriff, and to keep – and to make available to law enforcement – records of the individuals who sell metals to them. It prohibits metal recyclers from buying air conditioning coils and catalytic converters from most individual sellers, and strictly limits cash transactions, especially for copper. A violation of these regulations is a misdemeanor for the first offense and a felony for second and subsequent offenses. The act also creates the new crime of injuring another’s property for the purpose of obtaining nonferrous metals. The crime may be a misdemeanor or a felony of various degrees, depending on the extent of the property damage involved and whether anyone is injured. The act becomes effective October 1, 2012.
- **Sale of a Child.** In [S.L. 2012-153](#), the General Assembly created the new offense of “unlawful sale, surrender, or purchase of a minor.” It is a Class F felony, and carries the possibility of sex offender registration if ordered by the sentencing judge. The bill fills what appears to have been a gap in prior law, as discussed [here](#) on the North Carolina Criminal Law blog. The law takes effect on December 1, 2012.
- **Children Conceived During Sex Crimes.** In [S.L. 2012-40](#), the General Assembly provided that a court may terminate a person’s parental rights regarding a child when “[t]he parent has been convicted of a sexually related offense under Chapter 14 of the General Statutes that resulted in the conception of the juvenile.” So, for example, a person convicted of a rape that resulted in a pregnancy may have his parental rights terminated as to the resulting child.
- **Expansion of Continuous Alcohol Monitoring.** Continuous Alcohol Monitoring (CAM) involves wearing an ankle bracelet that monitors the wearer’s sweat for traces of alcohol, thereby detecting whether the person has been drinking. Over the past five years, the technology has been authorized for use in certain impaired driving cases, initially as a condition of probation and later as a condition of pretrial release for certain defendants. In [S.L. 2012-146](#), the General Assembly dramatically expanded the possible use of CAM. It now may be imposed as a condition of pretrial release for *any* criminal offense, and may be imposed as a condition of probation for *any* criminal offense if an assessment reveals that the defendant suffers from alcohol abuse. The bill also further expands the role of CAM in DWI cases. The bill does not address concerns about the expense of CAM, which costs \$360 per month – a fee that is generally paid by the defendant rather than the state. The bill is discussed in greater detail [here](#) on the North Carolina Criminal Law Blog.