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## Criminal Law and Procedure

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The most significant legislation enacted by the 2005 General Assembly in the field of criminal law and procedure was what has become known as the *Blakely* bill, which responds to rulings of the United States Supreme Court that rendered unconstitutional portions of North Carolina’s sentencing statutes. As is common in most sessions, the General Assembly also passed legislation on a wide array of criminal law and procedure topics, including new restrictions on the sale of pseudoephedrine, a cold medication ingredient also used to manufacture methamphetamine, and revamped laws on identify theft and exploitation of an elderly or disabled adult. The General Assembly also passed legislation indirectly involving criminal law, expanding the collateral consequences of criminal convictions by requiring sex-offender registration for a wider range of offenses and criminal history checks for more types of employment and other activities.

This chapter does not review legislative changes to motor vehicle offenses. These are discussed in Chapter 17, “Motor Vehicles.”

### **The *Blakely* Bill**

#### **Background**

In *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the U.S. Supreme Court held that any fact (other than a prior conviction) that increases the defendant’s sentence beyond the statutory maximum permitted for the offense must be submitted to a jury and found beyond a reasonable doubt. In *Blakely v. Washington*, 542 U.S. 296 (2004), the Court elaborated on this principle, holding that the term *maximum* means the maximum sentence a judge may impose based solely on the facts found by the jury or admitted by the defendant. These rulings have had significant repercussions for felony sentencing in North Carolina. Almost all felonies in North Carolina are governed by structured sentencing, which has permitted judges to impose higher sentences based on the judges’ findings, by a preponderance of the evidence, that certain aggravating factors and prior record points exist. In several North Carolina Court of Appeals decisions and in the North Carolina Supreme Court’s decision in *State v. Allen*, 359 N.C. 425, 615 S.E.2d 256 (2005), the courts have recognized that, with some exceptions, this approach runs afoul of the principles announced in *Apprendi* and *Blakely*.

In light of these problems, the General Assembly enacted S.L. 2005-145 (H 822) (the *Blakely* bill), effective for offenses committed on or after June 30, 2005. [The North Carolina Supreme Court's *Allen* decision and the decisions by the North Carolina Court of Appeals govern the procedures to be followed for offenses committed before June 30, 2005. For a detailed discussion of the differences in procedure for offenses committed before and after the effective date of the act, see Jessica Smith, *North Carolina Sentencing after Blakely v. Washington and the Blakely Bill* (Sept. 2005), [ncinfo.iog.unc.edu/programs/crimlaw/faculty.htm](http://ncinfo.iog.unc.edu/programs/crimlaw/faculty.htm)]. The *Blakely* bill applies to structured sentencing for felonies in both district and superior court. It does not apply to structured sentencing for misdemeanors, which so far is unaffected by the U.S. Supreme Court's decisions. The act also does not apply to the sentencing scheme for impaired driving offenses under G.S. Chapter 20, although that scheme is affected by the U.S. Supreme Court's decisions. For guidance on the sentencing procedure to follow in those cases, see *State v. Speight*, 359 N.C. 602, 614 S.E.2d 262 (2005); see also Smith, *supra*.

The *Blakely* bill makes the following changes to the procedures for imposing a sentence in a felony case. The revised procedures can be divided into three categories—the procedures for pleading or otherwise alleging aggravating factors and prior record points that would enhance a defendant's sentence, the procedures for determining the existence of aggravating factors and prior record points, and the procedures for considering mitigating factors and weighing them against aggravating factors and imposing a sentence. Unless otherwise noted, all the changes appear in revised G.S. 15A-1340.16 (aggravated and mitigated sentences) and G.S. 15A-1340.14 (prior record level for felony sentencing).

### **Pleading Requirements**

The act essentially creates three different pleading rules depending on the aggravating factors and prior record points being sought to enhance a defendant's sentence.

1. The state must allege in an indictment or other charging instrument (such as an information if an indictment is waived) the aggravating factor under G.S. 15A-1340.16(d)(20). This type of aggravating factor is known as a "nonstatutory aggravating factor" because it does not specify any particular conduct but rather includes any aggravating factor "reasonably related to the purposes of sentencing."

2. The state must provide written notice to the defendant of its intent to prove the existence of any aggravating factors listed in G.S. 15A-1340.16(d)(1) through (19). These are known as "statutory aggravating factors" because they specify conduct that constitutes an aggravating factor. The state also must provide written notice of its intent to prove the prior record level point under G.S. 15A-1340.14(b)(7), which adds a point if the defendant committed the offense while on probation, parole, or post-release supervision; while serving a sentence of imprisonment; or while on escape from a correctional facility during a sentence of imprisonment. The state must give this notice at least thirty days before trial or entry of a guilty or no contest plea, but the defendant may waive the notice. The act does not require the state to include these factors or points in an indictment or other charging instrument.

3. The state is not required to allege in the charging instrument or in a written notice prior convictions or the prior record point in G.S. 15A-1340.14(b)(6), which adds a point if all the elements of the present offense are included in a prior offense for which the defendant was convicted.

### **Procedure for Determining Aggravating Factors and Prior Record Points**

The act essentially creates four new procedures for determining aggravating factors as well as the prior record point under G.S. 15A-1340.14(b)(7) (offense while on probation, parole, and so forth). These new procedures do not apply to prior convictions and the prior record point under G.S. 15A-1340.14(b)(6) (present offense included in prior offense); the act does not change the structured sentencing procedures for those sentence enhancements, which a judge continues to determine by a preponderance of the evidence. The act provides that the judge also determines the aggravating factor that the defendant was previously adjudicated delinquent for an offense that would

be a Class A through E felony if committed by an adult. (According to revised G.S. 15A-1340.16(a), the judge must find this factor beyond a reasonable doubt.) The North Carolina Court of Appeals has held, however, that this factor, like other aggravating factors, must be determined by the jury or admitted by the defendant. *See State v. Yarrell*, \_\_\_ N.C. App. \_\_\_, 616 S.E.2d 258 (2005). The North Carolina Supreme Court has temporarily stayed the Court of Appeals decision but, until there is a final ruling, the safer course is for trial courts to apply the new sentencing procedures to this aggravating factor. The new procedures are as follows.

1. If the defendant does not plead guilty to the charged felony and does not admit the aggravating factors and prior record points alleged by the state, a jury is impaneled to try the felony and determine the existence of the alleged aggravating factors and points. The state must prove these factors and points beyond a reasonable doubt. The judge may submit both the felony charge and the factors and points to the jury at the same trial unless the interests of justice require that the jury consider the factors and points at a separate proceeding after trial of the felony. The act describes the procedures to be followed for reconvening the jury in the event separate proceedings are held.

2. If the defendant pleads guilty to the felony but contests one or more of the alleged aggravating factors or prior record points, a jury is impaneled to determine the existence of the aggravating factors and points only.

3. If the defendant admits the alleged aggravating factors and prior record points but pleads not guilty to the charged felony, the jury decides the felony charge only; evidence relating solely to the establishment of the factors and points is inadmissible. In taking the defendant's admission, the court must engage in the colloquy for accepting a guilty plea under G.S. 15A-1022(a) and must comply with the procedures for taking guilty pleas in new G.S. 15A-1022.1, which require, among other things, that the judge advise the defendant of his or her rights, determine that there is a factual basis for the factors and points admitted by the defendant, and determine that the decision to admit is the informed choice of the defendant. A new Administrative Office of the Courts (AOC) transcript of plea form, AOC-CR-300 (Oct. 2005), lists these steps.

4. If the defendant pleads guilty to the charged felony and admits the alleged aggravating factors and prior record points, a jury trial is unnecessary. In accepting the defendant's admission to aggravating factors and points, the judge must follow the procedures in G.S. 15A-1022(a) and new G.S. 15A-1022.1, discussed above.

Under all of the above procedures, the judge does not determine the existence of aggravating factors or prior record points. A judge may rely on those factors and points to enhance a defendant's sentence only if they are found by a jury or admitted by the defendant.

## **Consideration of Mitigating Factors and Selection of Sentence Range**

As under the previous version of structured sentencing, the judge determines the existence of any mitigating factors. If a jury has determined or the defendant has admitted any aggravating factors, and the judge determines that the aggravating factors outweigh any mitigating factors, the judge may depart from the presumptive range of sentences and impose a sentence in the aggravated range. If the judge determines that the mitigating factors outweigh the aggravating factors, the judge may impose a sentence in the mitigated range. The judge must consider any evidence of mitigating factors, but the decision to depart from the presumptive range is in the judge's discretion.

## **Criminal Offenses**

### **Sex-Related Offenses**

**Computer solicitation of sex act with child.** G.S. 14-202.3 has made it a Class I felony for a person to solicit a child by computer to commit a sex act if the person is sixteen years of age or older and the child is less than sixteen years of age and at least three years younger than the person. Effective for offenses committed on or after December 1, 2005, S.L. 2005-121 (S 472) raises this offense to a

Class H felony. It also revises the statute to make it a Class H felony if the person *believes* the child is less than sixteen years of age and at least three years younger than the person, whether or not the child is actually that age. The revised statute explicitly states that consent is not a defense to a violation.

The act also amends the sex offender registration statutes to provide that a violation of G.S. 14-202.3 is a “sexually violent offense” within the meaning of G.S. 14-208.6(5). Thus, a person convicted of this offense must register as a sexual offender for ten years following release or, if no prison sentence is imposed, for ten years following conviction. *See* G.S. 14-208.7.

Last, the act amends G.S. 114-15 to authorize the State Bureau of Investigation, on request of the Governor or Attorney General, to investigate the use of a computer to solicit children to participate in certain sex-related offenses.

**Indecent exposure.** G.S. 14-190.9(a) has made it a Class 2 misdemeanor for a person willfully to expose his or her private parts in a public place in the presence of a person of the opposite sex. Effective for offenses committed on or after December 1, 2005, S.L. 2005-226 (S 776) revises that section by deleting the requirement that the other person be of the opposite sex. The revised statute also provides that “same sex” exposure does not constitute indecent exposure if it occurs in a place designated for a public purpose and is incidental to a permitted activity.

The act also adds new G.S. 14-190.9(a1) making an act of indecent exposure a Class H felony if, in addition to the elements of misdemeanor indecent exposure, the defendant is eighteen years of age or older, the other person is under sixteen years of age, and the defendant acts for the purpose of arousing or gratifying sexual desire. The revised section states that the new felony offense is not a lesser offense of indecent liberties with a child under G.S. 14-202.1.

Last, the act revises G.S. 14-208.6(5) to designate the felony version of indecent exposure as a “sexually violent offense,” subjecting a defendant convicted of that offense to the ten-year sex offender registration requirements under G.S. 14-208.7.

**Sexual battery.** In 2003 the General Assembly enacted G.S. 14-27.5A, making it a Class A1 misdemeanor for a person to commit sexual battery, defined as touching another person by force and against the person’s will for the purpose of sexual gratification. Effective for offenses committed on or after December 1, 2005, S.L. 2005-130 (H 1209) amends the sexual offender registration statutes to provide that a violation of G.S. 14-27.5A is a “sexually violent offense” within the meaning of G.S. 14-208.6(5), subjecting the defendant to the ten-year sex offender registration requirements under G.S. 14-208.7. Previously, the only offenses subject to the mandatory sex-offender registration requirements have been felonies or offenses involving minors. Repeat misdemeanor peeping offenses are subject to the registration requirements, but the sentencing judge has the discretion to require registration.

The act also amends G.S. 15A-266.4 to add sexual battery to the list of offenses for which a person must provide a DNA sample if convicted.

**Babysitting by or near sex offender.** Effective for offenses committed on or after December 1, 2005, S.L. 2005-416 (H 1517) enacts new G.S. 14-321.1 to make babysitting unlawful in certain circumstances in which a sex offender is present. Under the new statute, it is unlawful for an

- adult
- to provide or offer to provide
- a “baby sitting service”
- either in a home in which a resident of the home is a sex offender registered in accordance with G.S. Chapter 14, Article 27, or when a provider of care for the babysitting service is a sex offender registered in accordance with G.S. Chapter 14, Article 27.

*Baby sitting service*, in turn, is defined as

- providing for profit
- supervision or care of a child under the age of thirteen
- who is unrelated to the provider by blood, marriage, or adoption
- for more than two hours per day
- while the child’s parent or guardian is not on the premises.

A first offense is a Class 1 misdemeanor, and a subsequent offense is a Class H felony.

## Animal-Related Offenses

**Assault on assistance animal.** G.S. 14-163.1 has made it a Class 1 misdemeanor to cause or attempt to cause physical harm to an assistance animal (an animal trained to assist a person with a disability) or to a law enforcement agency animal, and it has made it a Class I felony to cause or attempt to cause serious physical harm to such an animal. Effective for offenses committed on or after December 1, 2005, S.L. 2005-184 (S 1058) amends the statute to expand the definitions for both levels of offense to include nonphysical harm. For the misdemeanor offense, “harm” may include “any behavioral impairment” that impedes or interferes with the animal’s duties. For the felony offense, “serious harm” may include harm that requires retraining or retirement of the animal. The revised statute also requires that a person convicted of a violation make restitution for specified expenses, such as veterinary care for the animal or retraining.

**Electronic dog collars.** G.S. 14-401.17 has made it a Class 3 misdemeanor, and a Class 2 misdemeanor for a subsequent offense, to remove an electronic collar from a dog in thirty-eight of North Carolina’s one hundred counties. Effective for offenses committed on or after December 1, 2005, S.L. 2005-94 (H 862) extends that prohibition to the remaining counties. The act accomplishes this result by repealing G.S. 14-401.17(d), which listed the counties to which the prohibition applied.

**Dogfighting.** Effective for offenses committed on or after December 1, 2005, S.L. 2005-383 (H 1085) establishes a procedure to allow the court to order a defendant charged with illegally using dogs for fighting in violation of G.S. 14-362.2 to deposit with the clerk of superior court the expected costs of caring for the dogs pending disposition of the charges. New G.S. 19A-70 addresses the petition process (initiated by an animal shelter that takes possession of the dogs), service and hearing requirements, period of time covered by orders for the deposit of funds, renewal of orders, forfeiture of dogs for failure to pay, adoption or euthanizing of the dogs in the event of forfeiture, circumstances under which the defendant may obtain a refund of all or part of the deposit, and care of the dogs without removal from their existing location.

The new statute does not specify whether these matters are to be heard in district or superior court. If the matter is treated as a civil action, the district court may be the exclusive place for hearing. Article 1 of G.S. Chapter 19A provides that civil complaints for the protection and humane treatment of animals are filed in the district court in the county in which the animal cruelty allegedly occurred. In contrast, if the matter is construed to follow the criminal case, it could be heard by the district or superior court, depending on the stage of the case. A violation of G.S. 14-362.2, which is the basis for a petition for dog care expenses, is a Class H felony, which ordinarily begins in district court and, unless dismissed or resolved by guilty plea in district court, ends in superior court.

**Cockfighting.** Effective for offenses committed on or after December 1, 2005, S.L. 2005-437 (H 888) amends G.S. 14-362 to increase the offense of cockfighting from a Class 2 misdemeanor to a Class I felony.

**Computer-assisted remote hunting.** Effective for offenses committed on or after December 1, 2005, S.L. 2005-62 (H 772) prohibits engaging in computer-assisted remote hunting, or providing or operating a facility that allows computer-assisted remote hunting, of wild animals or wild birds located within North Carolina. *Computer-assisted remote hunting* is defined in new G.S. 113-291.1A as “the use of a computer or other device, equipment, or software, to remotely control the aiming and discharging of a firearm or other weapon, that allows a person, not physically present at the location of that firearm or weapon, to hunt or shoot a wild animal or wild bird.” A violation of the new statute is a Class 1 misdemeanor under G.S. 113-294(q) and results in a two-year suspension, under G.S. 113-276.3(d), of any license or permit applicable to the type of activity that resulted in the conviction.

## Theft-Related Offenses

**Identity theft.** Effective for offenses committed on or after December 1, 2005, S.L. 2005-414 (S 1048) renames the offense of financial identity fraud, in G.S. 14-113.20, as “identity theft” and makes other changes to facilitate enforcement of the statute. Amended G.S. 14-113.20 expands the definition of identifying information subject to the section to include employer tax identification

numbers, state identification cards, passport numbers, electronic mail names and addresses, and Internet account numbers and identification names. Under amended G.S. 14-113.21, the venue for prosecution of identity theft includes the county where the victim or defendant lives, any county where part of the identity theft took place, or any county instrumental to the completion of the offense. New G.S. 14-113.21A allows law enforcement officers to take complaints of identity theft and forward them to the appropriate law enforcement agency even though they do not have jurisdiction to investigate or prosecute the offense.

The criminal law changes are a small part of a larger act aimed at preventing identity theft. The act creates a new Article 2A in G.S. Chapter 75, entitled the "Identity Theft Protection Act," which contains numerous provisions requiring businesses to protect personal identifying information, such as Social Security numbers. Violations of the new provisions are considered violations of G.S. 75-1.1, subject to civil penalties under Article 1 of G.S. Chapter 75. The act also enacts G.S. 132-1.8 restricting the disclosure of Social Security numbers and other personal identifying information by agencies of the state or its political subdivisions. These provisions have varying effective dates. The new section also forbids a person, effective December 1, 2005, from filing a document in the official records of the register of deeds or of the courts that includes certain personal identifying information, such as Social Security numbers, in that document unless expressly required by law or court order or adopted by the State Registrar on records of vital events. A violation of this restriction is an infraction, subject to a penalty of up to \$500. The register of deeds and clerk of court may not be held liable for the inclusion of personal identifying information in records filed with their offices.

**Breaking or entering place of worship.** Effective for offenses committed on or after December 1, 2005, S.L. 2005-235 (S 972) enacts new G.S. 14-54.1 making it a Class G felony to break or enter a building that is a place of religious worship (as defined in the new statute) with the intent to commit a felony or larceny. Breaking or entering other types of buildings (other than dwellings) remains a Class H felony.

**Failure to return rented vehicle.** G.S. 14-167 has made it a Class 2 misdemeanor to fail to return rented property, including a rented motor vehicle, at the expiration of the rental period. Effective for offenses committed on or after December 1, 2005, S.L. 2005-182 (H 1392) makes it a Class H felony to fail to return a rented motor vehicle if at the time of the rental the vehicle had a fair market value of more than \$4,000.

The act also enacts new G.S. 14-168.5 and new G.S. 20-102.2. G.S. 14-168.5 provides that certain acts constitute prima facie evidence of an intent to commit the offenses of failing to return rented property in violation of G.S. 14-167, renting property with the intent to defraud in violation of G.S. 14-168, and conversion of rented property in violation of G.S. 14-168.1. G.S. 20-102.2 provides that a law enforcement officer who receives a report of a failure to return a rented vehicle in violation of G.S. 14-167 must report the information to the National Crime Information Center (NCIC); upon recovery of the vehicle, the officer must report this information to the NCIC and to the party who reported the loss.

**Larceny of construction materials.** Effective for offenses committed on or after December 1, 2005, S.L. 2005-208 (S 532) enacts new G.S. 14-72.6 to make larceny, receiving stolen goods, and possession of stolen goods Class I felonies if the goods are stolen from a permitted construction site and are valued at more than \$300 and less than \$1,000. Larceny, receiving, and possession remain Class H felonies, regardless of the site of the theft, if the goods are worth more than \$1,000.

**Exploitation of elder or disabled adult.** G.S. 14-32.3(c) has made it a crime for a caretaker to exploit an elder or disabled adult. Violation of that subsection has been a Class H felony if the exploitation resulted in the loss of more than \$1,000 and a Class 1 misdemeanor if the loss was \$1,000 or less.

Effective for offenses committed on or after December 1, 2005, S.L. 2005-272 (H 1466) repeals G.S. 14-32.3(c) and replaces it with G.S. 14-112.2. The new statute creates two offenses involving exploitation of an elder or disabled adult [defined in new G.S. 14-112.2(a)]. Under new G.S. 14-112.2(b), it is unlawful for a person

- who is in a position of trust and confidence or has a business relationship with an elder or disabled adult
- knowingly

- by deception or intimidation
- to obtain or use or endeavor to obtain or use an elder or disabled adult's funds, assets, or property
- with the intent to deprive temporarily or permanently the elder or disabled adult of the use, benefit, or possession of the property or to benefit someone other than the elder or disabled adult.

A violation is a Class F felony if the property is valued at \$100,000 or more, a Class G felony if the property is valued at \$20,000 or more but less than \$100,000, and a Class H felony if the property is valued at less than \$20,000.

Under new G.S. 14-112.2(c), it is unlawful for a person

- who knows or reasonably should know
- that an elder or disabled adult lacks the capacity to consent
- to obtain or use, endeavor to obtain or use, or conspire with another to obtain or use an elder or disabled adult's funds, assets, or property
- with the intent to deprive temporarily or permanently the elder or disabled adult of the use, benefit, or possession of the property or to benefit someone other than the elder or disabled adult.

The subsection provides that it does not apply to a person acting within the scope of his or her lawful authority as an agent for the adult. A violation is a Class G felony if the property is valued at \$100,000 or more, a Class H felony if the property is valued at \$20,000 or more but less than \$100,000, and a Class I felony if the property is valued at less than \$20,000.

**Pirating movie in theater.** Effective for offenses committed on or after December 1, 2005, S.L. 2005-301 (H 687) enacts G.S. 14-440.1 making it a crime for a person to

- knowingly
- operate or attempt to operate
- an audiovisual recording device
- in a motion picture theater
- to transmit, record, or otherwise make a copy of a motion picture
- without the written consent of the theater owner.

A first offense is a Class 1 misdemeanor, and a subsequent offense is a Class I felony. Upon conviction, the court must order the forfeiture and destruction of unauthorized recordings made and devices used in connection with the offense.

**Preparation to break or enter motor vehicle.** G.S. 14-55 has made it a Class I felony to possess certain weapons or tools with the intent to break or enter a building to commit a felony or larceny. Effective for offenses committed on or after December 1, 2005, S.L. 2005-352 (H 891) enacts a parallel statute prohibiting preparation to break or enter a motor vehicle. New G.S. 14-56.4(b) makes it unlawful to

- possess
- a motor vehicle master key, manipulative key, or other motor vehicle lock-picking or hot-wiring device
- with the intent to commit a felony, larceny, or unauthorized use of a motor conveyance.

New G.S. 14-56.4(c) makes it unlawful to

- willfully
- buy, sell, or transfer
- a motor vehicle master key, manipulative key or device, or certain other instruments
- designed to open or capable of opening the door or trunk or starting the engine of a motor vehicle
- for use in any manner prohibited by G.S. 14-56.4.

A first offense is a Class 1 misdemeanor, and a subsequent offense is a Class I felony. The prohibition does not apply to locksmiths, towing service employees, law enforcement officers, and certain others.

## Controlled Substances

**Pseudoephedrine (methamphetamine precursor).** Effective for offenses committed on or after January 15, 2006, S.L. 2005-434 (H 248) imposes various restrictions on the sale of pseudoephedrine, an ingredient in lawful cold medication, but also used in the illegal manufacture of methamphetamine. New G.S. 90-113.52 through G.S. 90-113.54 contain these restrictions—for example, that a retailer may not offer pseudoephedrine for sale by self service and a customer may not make a retail purchase without a prescription of more than three packages containing a total of more than nine grams of pseudoephedrine products within a thirty-day period.

New G.S. 90-113.56 establishes the following penalties for violations of these sales restrictions:

- A retailer who willfully and knowingly violates the restrictions in G.S. 90-113.52 through G.S. 90-113.54 is guilty of a Class A1 misdemeanor for a first offense and a Class I felony for a subsequent offense. A retailer convicted of a third offense on the premises of a single establishment is prohibited from selling pseudoephedrine products at that establishment. *See* G.S. 90-113.56(a).
- A purchaser or an employee of a retailer who violates the restrictions in G.S. 90-113.52(c) or 90-113.53 is guilty of a Class 1 misdemeanor for a first offense, a Class A1 misdemeanor for a second offense, and a Class I felony for a subsequent offense. These penalties do not apply to a bona fide innocent purchaser. *See* G.S. 90-113.56(b).
- A retailer who fails to train employees in accordance with G.S. 90-113.55, supervise them in transactions involving pseudoephedrine products, or discipline them for violations is subject to a fine of \$500 for a first violation, \$750 for a second violation, and \$1,000 for a subsequent violation. Apparently these sanctions, although labeled “fines,” are civil penalties, imposed administratively and not as part of a criminal case.

New G.S. 90-113.57 gives retailers and employees immunity from civil liability for reporting to law enforcement, reasonably and in good faith, criminal activity involving the sale or purchase of pseudoephedrine products and for refusing to sell such products to a person reasonably believed to be ineligible to purchase them.

The act also enacts G.S. 66-254.1 making it unlawful for itinerant merchants, peddlers, and specialty markets to sell pseudoephedrine products and certain other drugs. A first offense is a Class 1 misdemeanor, a second offense is a Class A1 misdemeanor, and a subsequent offense is a Class I felony.

For a discussion of pretrial release restrictions related to methamphetamine offenses, see “Criminal Procedure and Evidence,” below.

**Illegal substances tax.** G.S. 105-113.112 has restricted the disclosure and use in a criminal proceeding of information obtained in the course of administering the tax on illegal substances in Article 2D of G.S. Chapter 105. Effective September 27, 2005, S.L. 2005-435 (H 105) amends that section to clarify the restrictions on disclosure and use. Amended G.S. 105-113.112 provides as follows:

- Information obtained by the Department of Revenue in the course of administering the illegal substances tax is confidential.
- The information may not be disclosed except in the limited circumstances described in G.S. 105-259.
- The information may not be used as evidence in a criminal prosecution, and no employee or agent of the Department of Revenue may testify about the information in a criminal prosecution, other than for an offense under the illegal substances tax article or under the article on general administration of the tax laws (Article 9 of G.S. Chapter 105). This restriction does not apply to information obtained from a source other than an employee or agent of the Department of Revenue. An employee or agent who provides evidence or testimony in violation of this provision is guilty of a Class 1 misdemeanor.

## Alcohol and Tobacco

**Stronger beer.** Effective August 13, 2005, S.L. 2005-277 (H 392) amends G.S. 18B-101(9) to revise the definition of “malt beverage” to increase the allowable alcohol content from 6 percent to 15 percent by volume. A malt beverage with more than 6 percent alcohol by volume must bear a label indicating the alcohol content.

**Alcohol and tobacco sales.** Effective September 7, 2005, S.L. 2005-350 (H 1500) amends G.S. 18B-302(d) and G.S. 14-313(b) to provide that it is a defense to selling alcohol or tobacco to an underage purchaser that the seller relied on a biometric identification system that demonstrated that the purchaser was the required age for the purchase. A biometric identification system is a system in which the customer registers his or her identification in advance with the seller and thereafter makes purchases by, for example, pressing his or her finger on a fingerprint reader, of products that would otherwise require proof of age.

## Gambling

**Lottery offenses.** The act authorizing a state-sponsored lottery [S.L. 2005-344 (H 1023), as amended by Part 31 of the Current Operations and Capital Improvements Appropriations Act of 2005, S.L. 2005-276 (S 622)] created two new offenses in G.S. 18C-131(d):

- selling a lottery ticket or share to a person under eighteen years of age, a Class 1 misdemeanor
- purchasing a lottery ticket or share by a person under eighteen years of age, also a Class 1 misdemeanor

The seller has a defense, under new G.S. 18C-131(e), if the underage buyer showed appropriate identification.

The lottery act also enacts G.S. 14-309.2 to exclude the state lottery from the prohibitions in Part 1 of G.S. Chapter 14, Article 37 (“Lotteries and Gaming,” G.S. 14-289 through G.S. 14-309.1). The act amends certain statutes within Part 1 to exclude the lottery from their coverage, but the general exclusionary language in new G.S. 14-309.2 appears broad enough to cover all of the statutes within that part. The act also modifies the existing gambling statutes to permit possessing a lottery ticket from or playing or betting on a lottery lawfully conducted in another state.

The lottery act was effective August 31, 2005.

**Raffles.** Effective August 31, 2005, S.L. 2005-345 (H 320) amends G.S. 14-309.15(d) to increase the maximum cash prize that may be offered for any one raffle from \$10,000 to \$50,000 and to increase the maximum total cash prizes that may be offered or paid by any nonprofit organization or association during one calendar year from \$10,000 to \$50,000.

## Confidentiality Violations

**“Responsible Individuals” list.** When a county department of social services receives a report of suspected child abuse or neglect, the department conducts an assessment to determine whether the child has been abused or neglected. Regardless of the determination, the department submits information about the report and assessment to a central registry maintained by the state Department of Health and Human Services (DHHS). The registry is a confidential collection of information used both to generate statewide statistics and to enable social services departments to identify children who are the subjects of more than one report. Effective for investigation assessment responses initiated by county departments of social services on or after October 1, 2005, S.L. 2005-399 (H 661) provides that when the county social services director’s assessment determines that a child has been abused or seriously neglected, the director also must identify the person responsible for the child’s status and report that information to DHHS for inclusion on a “Responsible Individuals” list. These responsibilities are reflected in revised G.S. 7B-311, which also identifies to whom DHHS may disclose information from the list, such as child care providers who need to determine the fitness of an individual to care for a child. G.S. 7B-311(c) makes it a Class 3 misdemeanor for a public official or employee knowingly to release information from the list or the central registry to an unauthorized

person, for an authorized person who receives such information to release it to an unauthorized person, or for an unauthorized person to access or attempt to access the information.

For a further discussion of the “Responsible Individuals” list, including the procedure for having one’s name removed from the list (in new Article 3A in G.S. Chapter 7B), see Chapter 23, “Social Services.”

**Confidential school employee information.** G.S. 115C-321 has designated as confidential most information in a school employee’s personnel file. Effective for offenses committed on or after December 1, 2005, S.L. 2005-321 (S 1124) amends the statute to make it a Class 3 misdemeanor, punishable by a fine only of up to \$500, for a person to knowingly, willfully, and with malice permit another person to have access to confidential personnel information when that person is not authorized for such access [G.S. 115C-321(c)] or for a person who is not authorized to have access to a personnel file to knowingly and willfully examine it in its official place or to remove or copy any portion of the file [G.S. 115C-321(d)].

**Autopsy records.** S.L. 2005-393 (H 1543) enacts new G.S. 130A-389.1 to regulate the disclosure of photographs and video and audio recordings of autopsies. A person who lawfully obtains an autopsy photograph or video or audio recording and discloses it without authorization is guilty of a Class 2 misdemeanor. *See* G.S. 130A-389.1(c). Other knowing and willful violations of the new section are also Class 2 misdemeanors. *See* G.S. 130A-389.1(g). A person is guilty of a Class 1 misdemeanor if he or she is not authorized to obtain an autopsy photograph or video and knowingly removes, copies, or otherwise creates an image of the photograph or video with the intent to steal it. *See* G.S. 130A-389.1(h). The new section does not apply to the use of autopsy photographs or video or audio recordings in a criminal, civil, or administrative proceeding, but the presiding judge may restrict public disclosure of autopsy, crime scene, or similar photographs or recordings. The act applies to unauthorized disclosures and other offenses committed on or after December 1, 2005, regardless of whether the autopsy occurred before or after that date.

## Regulatory Offenses

**Debt adjusting.** G.S. 14-424 has made it a Class 2 misdemeanor to engage in *debt adjusting*, defined in G.S. 14-423 as entering into a contract with a debtor under which the debtor agrees to pay money to the debt adjuster, who then distributes the money to the debtor’s creditors. G.S. 14-426 has exempted certain practices from this prohibition. S.L. 2005-408 (S 590) revises the definition of debt adjusting and exempts from the prohibition additional individuals and organizations, such as attorneys licensed to practice in North Carolina who are not employed by a debt adjuster. The act also revises G.S. 14-425 to authorize the Attorney General to file an action in superior court to enjoin, as an unfair or deceptive trade practice, the continuation or offering of any debt adjusting services. The act has varying effective dates in 2005 but expires October 1, 2007.

**Falsifying highway inspection reports.** Effective for offenses committed on or after December 1, 2005, S.L. 2005-96 (H 664) revises G.S. 136-13.2 to make it a Class H felony for any person knowingly to falsify or to direct a subordinate to falsify any inspection or test report required by the Department of Transportation (DOT) in connection with the construction of highways. Previously, the statute applied only to DOT employees.

**Voting systems.** Effective for purchases or upgrades of voting systems on or after August 1, 2005, S.L. 2005-323 (S 223) imposes new requirements on vendors of voting systems and, depending on the requirement at issue, makes a violation a Class G or Class I felony. The act also authorizes civil penalties of up to \$100,000 per violation, to be assessed by the State Board of Elections. *See* G.S. 163-165.9A.

**Boiler and pressure vessels.** Effective October 1, 2005, S.L. 2005-453 (H 768) revises the civil and criminal penalties for violating the Uniform Boiler and Pressure Vessel Act. New G.S. 95-69.20 makes it a Class 2 misdemeanor to misrepresent oneself as an authorized inspector or to make a false statement in a required report or document. Other violations incur civil penalties under new G.S. 95-69.19.

**Recreational therapy.** Effective October 5, 2005, S.L. 2005-378 (H 613) enacts G.S. 90C-36 to make it a Class 1 misdemeanor for a person without a license to hold himself or herself out as a

licensed recreational therapist or to practice recreational therapy. The maximum fine for an offense is \$500.

**Notaries.** Effective December 1, 2005, S.L. 2005-391 (S 671) repeals G.S. Chapter 10A (Notaries) and replaces it with new G.S. Chapter 10B. The criminal penalties for violations of the new chapter are set forth in new G.S. 10B-35.

**Lobbyists.** Effective January 1, 2007, S.L. 2005-456 (S 612) amends the restrictions on legislative branch lobbying in Article 9A of G.S. Chapter 120 and creates new Article 4C in G.S. Chapter 147 restricting executive branch lobbying, violations of which are Class 1 misdemeanors under G.S. 120-47.9 and G.S. 147-54.42.

**Pathology services and practice of medicine.** Effective December 1, 2005, S.L. 2005-415 (H 636) requires certain disclosures on bills for pathology services. Each intentional failure to disclose is a Class 3 misdemeanor, punishable by a fine of up to \$250 under new G.S. 90-681(i). The act also amends G.S. 90-18(a) to make it a Class I felony for an out-of-state practitioner to practice medicine without being licensed in North Carolina; it remains a Class 1 misdemeanor to practice medicine without a license.

**Unemployment insurance.** G.S. 96-18(b1) provides that the penalties and provisions of certain tax statutes apply to comparable violations with respect to unemployment insurance contributions. That subsection has provided that G.S. 105-236(7), which makes it a Class H felony to attempt to evade or defeat a tax, applies to unemployment insurance contributions if the employing unit or unpaid contribution is of a certain size. Effective December 1, 2005, S.L. 2005-410 (S 757) revises G.S. 96-18(b1) to make it a Class 1 misdemeanor to violate G.S. 105-236(7) if the size of the employing unit or contribution is less than that required for the felony offense.

**False statements by grantees of state funds.** Effective July 1, 2005, S.L. 2005-276 (S 622) adds G.S. 143-6.2(b2) to require nonstate entities that receive state funds to file with the disbursing state agency a sworn statement that the entity does not have any overdue tax debts. A false statement is a Class A1 misdemeanor under new G.S. 143-34(b).

**Credit insurance.** G.S. 58-57-80 has made it a Class 3 misdemeanor for a creditor to violate certain credit insurance requirements in G.S. Chapter 58, Article 57. Effective January 1, 2006, S.L. 2005-181 (H 653) repeals that section and enacts G.S. 58-57-71 giving the Commissioner of Insurance broader civil enforcement powers.

**Bank logos.** Effective for offenses committed on or after December 1, 2005, S.L. 2005-162 (H 1168) enacts G.S. 53-127(c1) to prohibit a person from using the name or logo of a bank in connection with the sale or advertising of any financial product or service unless the bank has consented in writing. A violation is a Class 3 misdemeanor. New G.S. 53-127(e) provides that a bank may file an action to enjoin the use of its name or logo, and a court may grant an injunction and order the defendant to pay the bank all profits derived from and all damages suffered because of the wrongful use of the name or logo.

## Other Offenses

**Shooting into occupied property.** G.S. 14-34.1 has made it a Class E felony for a person willfully or wantonly to discharge or attempt to discharge a firearm into an occupied building or conveyance. Effective for offenses committed on or after December 1, 2005, S.L. 2005-461 (S 486) amends that section to create three separate offenses:

- G.S. 14-34.1(a) continues to make the above offense a Class E felony.
- New G.S. 14-34.1(b) makes it a Class D felony for a person willfully or wantonly to discharge a firearm into an occupied dwelling (as opposed to any occupied building) or an occupied conveyance that is in operation.
- New G.S. 14-34.1(c) makes it a Class C felony if a violation of subsections (a) or (b) results in serious bodily injury. The act does not provide a definition for “serious bodily injury.” Compare G.S. 14-32.4 (for purposes of the offense of assault inflicting serious bodily injury, *serious bodily injury* is defined as “bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that

causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization”).

**Concealing death of person.** Effective for offenses committed on or after December 1, 2005, S.L. 2005-288 (H 926) enacts new G.S. 14-401.22 creating two new crimes. It is a Class I felony for a person, with intent to conceal the death of a person, to fail to notify law enforcement of the death or to secretly bury or otherwise secretly dispose of a dead body. It is a Class A1 misdemeanor to aid or abet another in concealing the death of a person.

**Making a false bomb report.** G.S. 14-69.1(a) has made it a Class H felony to make a false report that there is a bomb in a building, and G.S. 14-69.1(c) has made it a Class G felony to make a false report that there is a bomb in a public building. Effective for offenses committed on or after December 1, 2005, S.L. 2005-311 (H 490) revises both subsections to provide that it is a crime to make a false report that there is a bomb in sufficient proximity to damage a building.

**Truancy.** Effective for offenses committed on or after December 1, 2005, S.L. 2005-318 (H 779) amends G.S. 115C-380 and G.S. 116-235(b)(2) to increase from a Class 3 to Class 1 misdemeanor the offense of aiding and abetting a student’s unlawful absence from school.

**Pointing laser device at aircraft.** Effective for offenses committed on or after December 1, 2005, S.L. 2005-329 (S 428) makes it a Class H felony for a person to

- willfully
- point a laser device at an aircraft that is taking off, landing, in flight, or otherwise in motion
- while the device is emitting a laser beam.

## Criminal Procedure and Evidence

### Jury Service

Effective for people summoned for jury service on or after October 1, 2005, S.L. 2005-149 (S 321) amends G.S. 9-6.1 to allow people seventy-two years of age or older to request to be excused from jury duty. Previously, a person could make such a request if sixty-five years of age or older. The statute does not give people seventy-two and older an automatic exemption. In practice, however, court officials routinely grant such requests.

### Expunction of Records

Two acts deal with criminal record expunction. The first, S.L. 2005-452 (H 1213), enacts new G.S. 15A-146(a1) to authorize the expunction of multiple charges if

- all of the charges were dismissed or findings of not guilty or not responsible were made,
- the offenses were alleged to have occurred within the same twelve-month period or the charges were dismissed or findings were made at the same term of court (one week for superior court and one day for district court),
- the applicant has not previously received an expunction under the new subsection or under G.S. 15A-145 or G.S. 90-96, and
- the applicant has not been convicted of a felony.

A person may obtain an expunction of multiple charges under the new subsection even though the charges did not arise from the same transaction or occurrence and were not consolidated for judgment. Apparently a person may also obtain an expunction of multiple charges under the new subsection even if he or she previously obtained an expunction under G.S. 15A-146(a). New G.S. 15A-146(a1) bars an expunction only if the person has previously obtained an expunction under “this subsection”—that is, G.S. 15A-146(a1)—or under one of the other sections mentioned above. An expunction under G.S. 15A-146(a) is not listed as a bar. The act states that it is effective October 1, 2005, which means that a person should be able to obtain an order of expunction regardless of whether the alleged offense occurred or the proceedings ended before or after that date.

The second act, S.L. 2005-319 (H 1328), enacts new G.S. 15A-149 to provide that if a person receives a pardon of innocence, the person is entitled to have the records of the conviction expunged. The new statute describes the steps to be followed by the applicant, the clerk of court, and the various agencies in possession of these records. The act states that it is effective August 25, 2005, which means that a person should be able to obtain an order of expunction regardless of whether the conviction or pardon occurred before or after that date.

### **Search Warrants**

Generally, for a judicial official to issue a search warrant, he or she must receive an affidavit from the applicant setting forth the facts and circumstances justifying issuance of the warrant. G.S. 15A-245(a) has allowed the supporting affidavit to be supplemented by oral testimony under oath. Effective October 1, 2005, S.L. 2005-334 (H 1485) amends G.S. 15A-245(a) to allow a search warrant to be issued based on audiovisual transmission of oral testimony under oath or affirmation from a sworn law enforcement officer to the issuing official. The issuing official and the officer must be able to see and hear each other. The statute does not address various implementation issues—for example, how the testimony will be memorialized and served. *Compare* FED. R. CIV. P. 41 (authorizing warrants based on telephonic communications and specifying that, among other things, the testimony must be recorded by a recording device or court reporter, the recording or court reporter's notes must be transcribed and certified by the issuing official, and the issuing official must prepare an original warrant and the applicant must prepare a duplicate warrant for service). The act requires that before a district may permit the issuance of search warrants based on audiovisual transmissions, the senior resident superior court judge and chief district court judge must obtain approval from the AOC of the equipment and procedures to be used.

### **Source of Bond Funds for Pretrial Release**

S.L. 2005-375 (H 1409) amends G.S. 15A-539 to permit a judge, on motion of the state or on the judge's own motion, to conduct a hearing into the source of money or property to be posted for a defendant about to be released on a secured appearance bond. The judge may refuse to accept the money or property offered as security for the bond if the state proves by a preponderance of the evidence that, because of its source, the money or property will not reasonably assure the person's appearance. The act applies to bond hearings conducted on or after December 1, 2005. It also provides that a pretrial release order entered before December 1, 2005, may not be revoked or modified solely on the basis of the act.

### **Pretrial Release Restrictions Involving Methamphetamine Offenses**

Effective for offenses committed on or after January 15, 2006, S.L. 2005-434 enacts G.S. 15A-736.1 to authorize judicial officials to deny pretrial release for certain methamphetamine offenses under certain conditions. The new statute provides that a rebuttable presumption arises that no conditions of release would assure the safety of the community if the state shows by clear and convincing evidence that

- the defendant is charged with a violation of G.S. 90-95(b)(c) (manufacture of methamphetamine) or G.S. 90-95(d1)(2)b. (possession of precursor chemical knowing that it will be used to manufacture methamphetamine), and
- the defendant is dependent on or regularly uses methamphetamine and the violation was committed or attempted to maintain or facilitate the defendant's dependence or use.

The act places this new statute in the article on extradition (Article 37 of G.S. Chapter 15A) rather than in the article on pretrial release (Article 26, Part 1, of G.S. Chapter 15A), and the new section states that it applies notwithstanding G.S. 15A-736, which deals with bail in extradition cases. Although it seems unlikely that the General Assembly intended to limit the new restrictions to

extradition cases—that is, to methamphetamine offenses committed in another state—the placement of the restrictions in the extradition article makes it unclear whether they may be applied to in-state offenses.

### **Federal Lands**

Effective May 27, 2005, S.L. 2005-69 (H 236) revises G.S. 104-7, which deals with the acquisition of state lands by the United States for certain purposes, such as expanding U.S. army bases. The revised section provides that the state has concurrent power to enforce its criminal law on lands purchased or otherwise obtained by the United States. This provision appears to apply prospectively to lands obtained by the United States on or after May 27, 2005. For lands obtained by the United States before that date, the terms and date of the transfer determine whether the state and federal government have concurrent jurisdiction or the federal government has exclusive jurisdiction. For a discussion of this issue, *see* ROBERT L. FARB, *ARREST, SEARCH & INVESTIGATION* 17 & n.60 (3d ed. 2003).

### **Speed-Checking Devices**

G.S. 8-50.2 has allowed results obtained by radio microwave, laser, and other speed-measuring instruments to be admitted to corroborate the opinion of a person who visually observed the speed of an object. The statute also has required, as a condition of admissibility, that microwave and other electronic speed-measuring instruments be tested for accuracy by an appropriately licensed technician and that laser instruments be tested in accordance with standards established by the North Carolina Criminal Justice Education and Training Standards Commission. Effective October 1, 2005, S.L. 2005-137 (H 821) clarifies these testing requirements [in G.S. 8-50.2(c)] in two respects: (1) it requires that all of these devices be tested by an appropriately licensed technician and that the testing be done in accordance with commission standards, and (2) it specifies the types of licenses and certificates that qualify a technician to test these devices.

## **Law Enforcement**

### **Campus Police at Private Nonprofit Colleges**

Effective July 28, 2005, S.L. 2005-231 (S 527) enacts the Campus Police Act, codified in new G.S. Chapter 74G. It authorizes the Attorney General to certify a private nonprofit institution of higher education as a campus police agency and to commission campus police officers. Police agencies at private institutions of higher education that are certified under G.S. Chapter 74E (the Company Police Act) are automatically converted to campus police agencies under new G.S. Chapter 74G unless the institution's board of trustees elects not to have the agency converted. Police agencies with public institutions of higher education remain under the authority of G.S. Chapter 116 (constituent institutions of The University of North Carolina) and G.S. Chapter 115D (community colleges) unless they apply to the Attorney General to be certified as campus police agencies under new G.S. Chapter 74G.

While in the performance of their duties, campus police officers commissioned by the Attorney General have the same powers as municipal and county police officers to arrest for felonies and misdemeanors and to charge infractions in the following areas:

- Real property owned by or in the possession and control of the employing institution
- Public roads or highways passing through the institution's property or immediately adjoining it
- Other real property while the officer is in continuous and immediate pursuit of a person for an offense committed on the institution's property or on a public road or highway immediately adjoining it

The governing body of an educational institution that has a campus police agency may enter into joint agreements with municipalities, counties, and other educational institutions with campus police

agencies extending the law enforcement authority of its campus police officers into the other entity's jurisdiction. If authorized by their campus police agency, campus police officers may carry concealed weapons in accordance with G.S. 14-269(b)(5).

The act revises several criminal law and procedure statutes to recognize the status of campus police officers, including them under G.S. 14-34.2 (assault with firearm or other deadly weapon on officer), G.S. 14-415.10(4) and (5) (eligibility of officers for concealed handgun permit), G.S. 15A-402(f) (authority of officers to arrest outside territorial jurisdiction while in continuous and immediate pursuit of suspect for offense committed within territorial jurisdiction), and certain other statutes applicable to law enforcement officers.

The act also creates new G.S. 14-33(c)(8) making it a Class A1 misdemeanor to assault a company police officer certified under G.S. Chapter 74E or a campus police officer, whether certified under the new Campus Police Act or under G.S. Chapter 17C or 116.

### **General Assembly Special Police**

Effective September 7, 2005, S.L. 2005-359 (H 1086) expands the territorial jurisdiction of General Assembly special police officers by providing that they have jurisdiction in Raleigh while on official duty, in unincorporated parts of Wake County surrounded by the innermost right-of-way of Interstate 440 while on official duty, and in any part of the state in connection with official duties of General Assembly members and General Assembly events. A General Assembly police officer also has the authority to arrest a person outside the above areas when the person has committed an offense within any area for which the officer could have arrested the person and the arrest is made during the person's immediate and continuous flight from the area.

### **Concealed Weapons**

Five acts deal with concealed handgun permits and weapons.

**Military personnel.** Effective July 28, 2005, S.L. 2005-232 (S 109) enacts new G.S. 14-415.16A to extend concealed handgun permits of deployed military personnel for ninety days after the end of their deployment. The new statute allows a deployed military permittee or his or her agent to apply to the sheriff for the extension. Even if a military permittee does not apply for an extension, the act provides the following protections to a permittee who carries a concealed handgun after the permit expires. First, during the ninety days following the end of deployment, a military permittee with an expired permit may not be charged with carrying a concealed handgun in violation of G.S. 14-415.21 if he or she (1) displays proof of deployment to a law enforcement officer who approaches the permittee and (2) meets the other requirements of G.S. 14-415.11(a) (that is, the permittee notifies the officer that he or she is carrying a concealed handgun). Second, during the ninety-day period, a military permittee with an expired permit may not be charged with carrying a concealed weapon in violation of G.S. 14-269(a1) if he or she displays proof of deployment to the officer. Third, new G.S. 14-269(b2) provides that it is a defense to prosecution for carrying a concealed weapon if the military permittee provides proof of deployment to the court. Under this third provision, the defendant apparently has the benefit of the defense regardless of whether he or she displayed proof of deployment to the officer; however, the defense may apply only to the carrying of the handgun during the period of deployment.

**Security guards.** G.S. 14-415.12A has provided that a qualified sworn law enforcement officer or former officer is deemed to have satisfied the requirement under G.S. 14-415.12(a)(4) that an applicant for a concealed handgun permit complete an approved firearms safety and training course. Effective for applications submitted on or after July 20, 2005, S.L. 2005-211 (S 778) extends that exemption to a person who is licensed or registered as an armed security guard by the North Carolina Private Protective Services Board and who has been issued a firearm registration permit by the board.

**Campus police officers.** Effective July 28, 2005, S.L. 2005-231 (S 527) amends G.S. 14-415.10(4) and (5) to treat campus police officers as law enforcement officers for purposes of obtaining a concealed handgun permit.

**Recipients of domestic violence protective orders.** Effective August 27, 2005, S.L. 2005-343 (H 1311) creates new G.S. 50B-3(c1) to provide that, when a domestic violence protective order is

issued, the clerk of superior court must provide to the plaintiff an informational sheet explaining his or her right to apply for a concealed handgun permit. The act directs the AOC to develop a standard informational sheet for the clerks' use. The act also modifies the requirements in G.S. 14-415.15(b) for issuance of a temporary concealed handgun permit. The revised section provides that proof of a domestic violence protective order constitutes evidence of an emergency situation warranting a temporary permit. The applicant still must meet the other statutory requirements to qualify for a temporary or regular permit.

**Off-duty officers.** Effective August 26, 2005, S.L. 2005-337 (H 1401) amends G.S. 14-269(b) to allow off-duty law enforcement officers to carry a concealed weapon if they do not consume alcohol or an unlawful controlled substance and do not have any alcohol or unlawful controlled substance in their systems. The act deletes the requirement that the carrying of a concealed weapon by an off-duty officer be authorized by local regulations issued by the sheriff, chief of police, or other officer in charge.

### **Disposition of Weapons**

G.S. 15-11.1(b1) has authorized the courts to order various dispositions of firearms seized in criminal cases and that are no longer necessary as evidence. Effective August 22, 2005, S.L. 2005-287 (H 1016) amends G.S. 15-11.1(b1) to permit a court to order that such a firearm be turned over to a law enforcement agency in the county of trial for the agency's official use or for sale to or exchange with a federally licensed firearm dealer. Such a disposition must be requested by the head of the law enforcement agency, and the firearm must have a legible, unique identification number. Proceeds of any sales go to the schools. The act makes similar amendments to G.S. 14-269.1, which authorizes the court to order the disposition of a deadly weapon upon conviction of certain offenses involving the weapon.

S.L. 2005-287 also enacts new G.S. 15-11.2, which provides for the disposition of unclaimed firearms that were not seized as trial evidence and were not related to a conviction covered by G.S. 14-269.1. The new section specifies notice and disposition procedures.

### **Electronic Surveillance**

Effective December 1, 2005, S.L. 2005-207 (S 748) makes the following changes to Article 16 of G.S. Chapter 15A, which regulates electronic surveillance—the interception of wire, oral, and electronic communications.

First, the act extends the time during which an order authorizing electronic surveillance remains in effect. As under current law, the surveillance order may be in effect for up to thirty days. Revised G.S. 15A-293(c) provides further that the thirty-day period starts when the officer first begins the interception under the order or ten days after the order is entered, whichever occurs first. This provision gives law enforcement an opportunity to set up the surveillance before the order is considered to begin running. The revised section also provides that the order may be extended for up to an additional thirty days rather than up to the current ten days.

Second, revised G.S. 15A-293(c) deals with intercepted communications that are in a code or a foreign language. It provides that when an expert in that language or code is not reasonably available, the interception may be "minimized" (in essence, limited to communications relevant to the investigation) as soon as practicable. The revised section also provides that the surveillance may be done by state or federal government personnel or contractors acting under supervision of the law enforcement officer authorized to conduct the interception. This provision would permit an officer to contract with a foreign language interpreter to translate an intercepted communication.

Third, new G.S. 15A-294(i) allows law enforcement in certain circumstances to obtain an order authorizing electronic surveillance that does not specify the facilities or place from which the communications are to be intercepted. Thus, an order might authorize an officer to engage in electronic surveillance of a particular individual who uses multiple communication devices (such as prepaid cell phones having a limited life span). New G.S. 15A-294(j) adds that the time period of the order commences when the officer implementing the order determines where the communications are to be intercepted.

## **Enforcement of Lottery Laws**

The lottery act (S.L. 2005-344, as amended by Part 31 of S.L. 2005-276), revises G.S. 18B-500 to provide that, in addition to their other duties, alcohol law enforcement agents are responsible for enforcing the lottery laws.

## **Seizure of Registration and License Documents**

Effective December 1, 2005, S.L. 2005-357 (H 1404) amends G.S. 20-45 to authorize any sworn law enforcement officer, with jurisdiction, to seize a certificate of title, registration card or plate, permit, or license if the officer has notice from the Division of Motor Vehicles (DMV) that the item has been revoked or cancelled or the officer otherwise has probable cause to believe that the item has been revoked or cancelled. If the item is needed for a criminal prosecution, the officer is to retain the item as evidence, but otherwise the officer is to turn the item over to DMV. An officer must report the seizure of a registration plate to DMV within forty-eight hours.

## **Sentencing, Probation, and Corrections**

### **Aggravating Factors**

G.S. 15A-1340.16(d)(6) has made it an aggravating factor in felony sentencing if the offense was committed against or proximately caused serious injury to certain individuals while the individual was performing official duties or because of the individual's official duties. Effective for offenses committed on or after December 1, 2005, S.L. 2005-101 (S 507) revises that subsection to add social workers to the list of covered individuals.

### **Appeal of Probation from District Court**

In *State v. Smith*, 165 N.C. App. 256, 598 S.E.2d 408 (2004), the North Carolina Court of Appeals addressed the effect of a defendant's appeal of a probationary sentence from district to superior court for a trial de novo. The court held that under the wording of G.S. 15A-1431(f), the defendant's probation was not stayed while the appeal was pending in superior court. The court also held that the time for the state to move to revoke the defendant's probation began to run from the date the district court imposed probation, notwithstanding that the probationary judgment was effectively in limbo while the case was pending in superior court. On July 1, 2005, the North Carolina Supreme Court reversed the court of appeals ruling and held that probation was stayed in the above circumstances. 359 N.C. 618, 614 S.E.2d 279 (2005). Consistent with that approach, the General Assembly, in S.L. 2005-339 (H 1145), effective August 26, 2005, repealed G.S. 15A-1431(f) and added G.S. 15A-1431(f1), which provides explicitly that an appeal for a trial de novo stays all of the following: payments of costs, payments of fines, probation or special probation, and active punishment. The amended statute recognizes that a district court's order imposing pretrial release conditions remains in effect during the appeal unless modified. [Under G.S. 15A-1431(c), which was not changed, apparently a district court judge may modify a pretrial release order up to ten days after entry of judgment, at which point jurisdiction of the case passes to superior court. *See also* 1 JOHN RUBIN, THOMASIN HUGHES, & JANINE FODOR, NORTH CAROLINA DEFENDER MANUAL § 1.9A, at 18 (1998) (discussing different interpretations of time within which district court judge may act), posted at [www.ncids.org](http://www.ncids.org).]

New G.S. 15A-1431(f1) also states that pending a trial de novo the judge may order any appropriate condition of pretrial release, including confinement in a local confinement facility. It seems unlikely that the General Assembly intended by this provision to authorize a judge to order the defendant confined, without any pretrial release conditions, pending a trial de novo. Rather, it appears that a judge may order confinement if the defendant fails to meet pretrial release conditions [essentially the wording of repealed G.S. 15A-1431(f)]. The provision apparently was intended to make it clear

that, notwithstanding the stay of the district court's judgment, a judge may still impose "appropriate" pretrial release conditions. Confinement without any opportunity to obtain release is not an appropriate pretrial release determination for misdemeanors (or for most felonies) under North Carolina law. In addition, interpreting the statute otherwise would conflict with the overall purpose of the statutory change—to stay any punishment pending a trial *de novo*—and could be considered to impinge on the defendant's right to appeal and right to a jury trial and exceed the constitutional limits on preventive detention. *See generally United States v. Salerno*, 481 U.S. 739 (1987).

### **Parole**

Section 17.28 of S.L. 2005-276 (S 622) directs the Post-Release Supervision and Parole Commission (Parole Commission), with the assistance of the Sentencing Commission and the Department of Correction (DOC), to analyze the amount of time each parole-eligible inmate has served compared to the time served by offenders for comparable crimes under structured sentencing. The Parole Commission must reinitiate the parole review process for any parole-eligible person who has served more time in custody than he or she would have served if sentenced to the maximum sentence under structured sentencing. *Maximum sentence* is defined as the maximum sentence a person could receive if sentenced in the presumptive range in prior record level VI. The Parole Commission must report to the General Assembly the results of the analysis by October 1, 2005, and the results of the parole reviews by February 1, 2006. The DOC and Parole Commission also must make a good faith effort (under Section 17.27 of the act) to enroll at least 20 percent of all eligible pre-structured-sentencing felons in the Mutual Agreement Parole Program by May 1, 2006. The DOC and Parole Commission must report to the General Assembly if the 20 percent participation goal is not met and explain why the goal was not realized.

### **Smoking in Prisons**

Effective January 1, 2006, S.L. 2005-372 (S 1130) enacts G.S. 148-23.1 prohibiting the use of tobacco products inside buildings at state correctional institutions except for authorized religious purposes. Violations by inmates and employees are subject to disciplinary measures by DOC; visitors in violation of the ban are subject to removal from the facility and loss of visitation privileges. The act also directs the department to study the feasibility of banning smoking on all grounds (inside and outside buildings) of state correctional institutions.

### **Palliative Care**

G.S. 148-4(8) has allowed the Secretary of Correction to extend the limits of the place of a prisoner's confinement for the purpose of receiving palliative care if the prisoner is terminally ill or permanently and totally disabled. S.L. 2005-276 (S 622) revises the criteria for this relief. A "terminally ill" inmate must have an incurable condition caused by illness or disease that was unknown at the time of sentencing and was not diagnosed upon entry to prison, will likely produce death within six months, and is so debilitating that it is highly unlikely the inmate poses a significant public safety risk. A "permanently and totally disabled" inmate must suffer from permanent and irreversible physical incapacitation as a result of an existing physical or medical condition that was unknown at the time of sentencing and was not diagnosed upon entry to prison, and is so incapacitating that it is highly unlikely the inmate poses a significant public safety risk. The Secretary must act expeditiously upon learning that an inmate meets these criteria and, in the case of a terminally ill inmate, must make a good faith effort to make a determination within thirty days of learning of the inmate's terminal condition.

## Substance Abuse Monitoring Costs

Judges sometimes waive court costs or make the costs of probation treatment programs a higher priority than other costs due the courts. S.L. 2005-276 (S 622) amends G.S. 15A-1343(b) to prohibit this practice.

## ADETS

S.L. 2005-312 (H 35) addresses attendance at Alcohol and Drug Education Traffic School (ADETS), a sanction for those convicted of impaired driving. The act directs the Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services to revise its rules to do two things—raise the minimum number of hours of attendance to sixteen and limit the maximum size per class to twenty. To reflect the likely increased costs to programs to implement these changes, the act raises the fee for ADETS from \$75 to \$160. The fee increase will not become effective until the commission revises its rules. Beginning January 1, 2009, the act establishes the following statutory minimum qualifications for ADETS instructors: each instructor must be a certified substance abuse counselor, certified clinical addiction specialist, or certified substance abuse prevention consultant, as those terms are defined by G.S. 122C-142.1(d1).

## Substance Abuse Treatment Providers

Article 5C of G.S. Chapter 90 establishes standards for the credentialing of substance abuse professionals practicing in North Carolina. Professionals credentialed under this law include, among others, substance abuse counselors, substance abuse prevention consultants, clinical supervisors, clinical addictions specialists, and substance abuse residential facility directors. Effective September 22, 2005, S.L. 2005-431 (S 705) amends Article 5C to add “certified criminal justice addictions professional” (CCJP) to the list of credentialed substance abuse professionals. New G.S. 90-113.31A(5) defines a *CCJP* as a person certified by the North Carolina Substance Abuse Professional Practice Board to practice as a CCJP and who, under supervision, provides direct services to clients or offenders exhibiting substance abuse disorders in a program determined by the board to be in a criminal justice setting. New G.S. 90-113.40(d1) describes the requirements for certification as a CCJP.

The act also requires, in new G.S. 90-113.46A, that all applicants for credentialing as a substance abuse professional submit to a criminal history record check. If the applicant has a conviction, the board must consider various factors in determining whether to deny registration, certification, or licensure of the applicant; a conviction does not automatically bar issuance of a credential. S.L. 2005-431 also enacts G.S. 114.19.11A to authorize the Department of Justice to provide criminal history information to the North Carolina Substance Abuse Professional Practice Board.

For more information about this act, see Chapter 16, “Mental Health.”

## Collateral Consequences

### Miscellaneous Consequences

**Parental rights.** G.S. 7B-1111(a)(8) has provided that a court may terminate the parental rights of a parent if the parent has committed certain offenses against the child (such as solicitation to commit murder), another child of the parent (such as murder or voluntary manslaughter), or any other children in the home. Effective for termination proceedings filed on or after June 30, 2005, S.L. 2005-146 (H 97) revises the statute to provide that a court also may terminate the parental rights of a parent if the parent has committed murder or voluntary manslaughter of the other parent of the child. The court may consider, however, whether the parent’s actions were committed in self-defense or defense of others or were based on some other justification.

**Sex offender registration.** For changes to the sex offender registration requirements, see the discussion of computer solicitation of a sex act with a child, sexual battery, and felony indecent exposure in “Criminal Offenses,” above.

**Domestic violence.** S.L. 2005-423 (S 1029) makes several changes to the civil laws governing domestic violence protective orders, discussed in Chapter 4, “Children, Families, and Juvenile Law.” The changes in that act involving criminal law are minimal. Effective October 1, 2005, amended G.S. 50B-3.1(e) and (f) provide that a person may not retrieve firearms ordered to be surrendered to the sheriff as part of an action for a domestic violence protective order until final disposition of any pending state or federal criminal charges allegedly committed by the defendant against the person who is the subject of the protective order.

### **Criminal Record Checks**

**Prospective adoptive parents.** G.S. 48-3-309 has required DHHS to obtain a criminal history of all prospective adoptive parents seeking to adopt a minor who is in the custody of a department of social services. Effective June 27, 2005, S.L. 2005-114 (H 451) requires that DHHS obtain criminal histories of all individuals eighteen years of age or older who reside in the prospective adoptive home. Under the revised statute, a county department of social services must issue an unfavorable assessment if it determines that, based on the criminal histories, either the prospective adoptive parent is unfit to care for children or another individual living in the home is unfit to reside with children.

**DHHS workers.** Effective June 27, 2005, S.L. 2005-114 (H 451) revises G.S. 114-19.6(a)(1) to expand the list of individuals associated with DHHS who are subject to a criminal record check. The revised statute covers applicants for employment, current employees, independent contractors and their employees, and others who have been approved to perform volunteer services. Previously the statute was limited to employees and applicants for employment who provided or would provide direct care for a client, patient, student, resident, or ward of DHHS.

**Health care facilities.** Effective March 23, 2005, S.L. 2005-4 (S 41) revises several statutes that have required long-term care facilities (adult care homes and their contract agencies and nursing homes or home-care agencies) and providers of mental health, developmental disabilities, and substance abuse services to obtain a criminal history check of certain applicants for employment. Because the existing statutes [G.S. 122C-80(b), 131D-40(a) and (a1), and 131E-265(a) and (a1)] allowed these facilities to obtain the results of a national criminal history check of an applicant, they appeared to violate federal limitations on who could view such information. The revised statutes direct the North Carolina Department of Justice to turn the national criminal history of employment applicants over to DHHS, Criminal Records Check Unit, which then notifies the facility whether the information affects employability. The revised statutes forbid sharing the actual national record check results with the facility.

**County governments.** The 2003 General Assembly enacted G.S. 114-19.14 to allow cities to obtain criminal history checks from the Department of Justice for applicants for city employment. Effective September 7, 2005, S.L. 2005-358 (S 737) revises that statute to give a county the same access to criminal history information for applicants for county employment. The legislation also enacts G.S. 153A-94.2 authorizing boards of county commissioners to adopt rules requiring applicants for county employment to be subject to a criminal history check.

**Archaeology.** Effective for applications for permits and licenses submitted to the Department of Cultural Resources on or after October 1, 2005, S.L. 2005-367 (S 796) enacts G.S. 114-19.17 to allow the department to obtain criminal history checks from the Department of Justice for applicants for a permit or license to conduct archaeological investigations on state lands (under G.S. Chapter 70, Article 2) or exploration, recovery, or salvage operations in certain waters within and adjacent to North Carolina (under G.S. Chapter 121, Article 3). The act revises the articles regulating these operations to specify the parameters of these record checks.

**Lotteries.** Effective August 31, 2005, S.L. 2005-344 (H 1023), as amended by Part 31 of S.L. 2005-276 (S 622), enacts G.S. 114-19.16 to allow the North Carolina State Lottery Commission and its director to obtain criminal history checks from the Department of Justice for any prospective employee of the commission and any prospective lottery vendor.

**Substance abuse treatment providers.** For information about criminal record checks for these jobs, see “Sentencing, Probation, and Corrections,” above.

## Indigent Defense

This section discusses changes to the administration of indigent defense. Legislation affecting court administration in general is discussed in Chapter 6, “Courts and Civil Procedure.”

### Copies of Files

Effective July 5, 2005, S.L. 2005-148 (S 689) amends G.S. 7A-452 to require that, in cases in which an indigent person has appealed and has been appointed appellate counsel by the Office of Indigent Defense Services (IDS), the clerk of superior court must make a copy of the complete trial division file, including documentary exhibits if requested, and furnish these materials to the appointed attorney.

Effective August 4, 2005, S.L. 2005-251 (S 593) adds new G.S. 7A-308(b1) to clarify that fees charged by the clerk for copies [under G.S. 7A-308(a)(12)] are not chargeable when the copies are requested by an attorney who has been appointed to represent an indigent person at state expense and the request is made in connection with the appointed case.

### \$50 Appointment Fee

Effective August 4, 2005, S.L. 2005-250 (S 592) revises G.S. 7A-455.1, which imposes a \$50 attorney appointment fee in criminal cases. The changes were made to conform to the North Carolina Supreme Court’s decision in *State v. Webb*, 358 N.C. 92, 591 S.E.2d 505 (2004), which struck down the portion of the statute requiring payment of the fee from defendants who were not convicted. The decision did not affect assessment of the appointment fee after conviction. The revised statute therefore requires defendants to pay a \$50 appointment fee only upon conviction. The court must add the fee to any amounts it determines to be owed for the value of the attorney’s services in the case. The act does not modify the other limitations in the statute on assessment of the fee. The statute continues to impose the fee in criminal cases at the trial level only; provides that the failure or refusal to pay the fee is not grounds for the denial of counsel, withdrawal of counsel, or contempt; provides that the fee is due only once for each attorney appointment, regardless of the number of cases to which an attorney is assigned; and bars a second fee if the cases in which the attorney was appointed are reassigned to a different attorney.

### Repayment of Attorneys’ Fees for Appeals, Chapter 7B Proceedings, and Probation

G.S. 7A-455(c) directs the court to enter a judgment for the value of services rendered by an attorney on behalf of an indigent defendant who has been convicted in a criminal case. Effective August 5, 2005, S.L. 2005-254 (S 594) amends that subsection to provide that no judgment for fees may be entered for the value of legal services rendered on appeal to the appellate division or in postconviction proceedings if all of the matters raised in the proceeding are vacated, reversed, or remanded for a new trial or resentencing. *See also State v. Rogers*, 161 N.C. App. 345, 587 S.E.2d 906 (2003) (holding under previous version of statute that attorneys’ fees could not be assessed for first trial and appeal when supreme court vacated convictions and ordered new trial).

Effective for appointments on or after October 1, 2005, the act revises G.S. 7B-603, which has authorized the court to order a parent or guardian to repay the costs of an attorney or guardian ad litem appointed for a juvenile in an abuse, neglect, and dependency proceeding or a proceeding to terminate parental rights. The statute has been unclear whether the court could order repayment of the fees for an attorney appointed for the parent in such proceedings. The revised statute clarifies that a court may

order repayment of the fees if the juvenile is adjudicated abused, neglected, or dependent or the parent's rights are terminated. The revised statute does not mandate that the court order repayment, however. New G.S. 7B-603(b1) uses the discretionary term "may" rather than the mandatory "shall" and also provides that in determining whether to order repayment, the court must consider the respondent's ability to pay. Thus, a court might decide not to order repayment if it found that the additional financial obligation would interfere with the parent's ability to take the necessary steps to care for his or her child. (The court must engage in a similar assessment under G.S. 7A-450.3 in deciding whether to require the parent to repay the attorneys' fees incurred for a juvenile.) If the court orders the parent to repay attorneys' fees (whether incurred for the parent or juvenile), and the parent fails to pay at the time of disposition, the court must enter a judgment in the amount due the state. The act deletes the provision, previously applicable to orders to repay attorneys' fees for juveniles, requiring the court to delay entry of judgment for ninety days following the order of repayment (in G.S. 7A-450.3). As part of these changes, the act also deletes the provision authorizing contempt for a failure to pay attorneys' fees [in G.S. 7B-603(c)]; however, other sections of G.S. Chapter 7B (G.S. 7B-2704 and G.S. 7B-2706) continue to provide that a court may hold a parent or guardian in contempt for failing to comply with court orders issued in delinquency proceedings, including orders to pay the attorneys' fees incurred on behalf of a juvenile.

G.S. 15A-1343(e) provides that, unless the court finds extenuating circumstances, it must require as a condition of probation that a defendant repay the fees of his or her public defender or appointed attorney. Effective August 4, 2005, S.L. 2005-250 revises G.S. 15A-1343(e) to clarify that the repayment obligation includes counsel who are employees of IDS, such as capital defenders, and counsel under contract with IDS, such as counsel who have contracted to handle a block of cases.

### **Appointment of Counsel in Chapter 35A Proceedings**

Effective August 4, 2005, S.L. 2005-250 (S 592) amends G.S. 35A-1245(c) to clarify that the appointment of counsel for a ward when the guardian is seeking sterilization must be in accordance with rules adopted by IDS. This change makes the statute consistent with the other appointment of counsel statutes.

### **Legal Services for Inmates**

Effective October 1, 2005, S.L. 2005-276 (S 622) transfers from DOC to IDS the responsibility for administering legal services for inmates in cases in which the state must provide legal assistance and access to the courts. The act revises G.S. 7A-498.3, which identifies the types of cases under IDS, to add this responsibility. Prisoners Legal Services, Inc. (PLS) has been providing legal services to inmates pursuant to a contract with DOC, and the act directs IDS to contract with PLS for an additional two years, during which time IDS must evaluate the services provided by PLS. The act transfers from DOC to IDS \$1,883,865 for the 2005-06 fiscal year and \$2,511,820 for the 2006-07 fiscal year to administer these services.

### **Expansion of Public Defender System**

The budget act, S.L. 2005-276 (S 622), authorizes IDS to use existing funds to complete the establishment of a public defender office in Wake County, created by the General Assembly in 2004. The act authorizes the hiring of twenty attorneys, four investigators, and six administrative support staff. The act also authorizes IDS to use existing funds to add up to ten new attorney and five new support staff positions in other offices.

The budget act established a public defender office in District 5 (New Hanover and Pender counties), but the technical corrections budget act (S.L. 2005-345, Section 50A) repealed those provisions. S.L. 2005-345 also authorizes the addition of two new attorney positions and one new support staff position in District 1 and one new attorney position in District 3A to handle indigent cases in District 2, where there is not a public defender office.

## **Rates for Appointed Counsel**

G.S. 7A-458 has provided that the fee to which an attorney who represents an indigent person is entitled is to be fixed in accordance with IDS rules. Pursuant to that statutory authorization, IDS adopted a rule establishing a statewide rate of \$65 an hour for all appointed cases (other than capital cases) in the district and superior courts. Section 14.13 of S.L. 2005-276 (S 622) amends G.S. 7A-458 to clarify that a court may not award fees at a rate higher than that established by IDS without IDS approval. The court retains the authority to review the hours claimed in each fee application and to approve or reduce those hours based on the factors normally considered in fixing attorneys' fees, such as the nature of the case and the time and responsibilities involved.

## **Studies**

### **Capital Cases**

S.L. 2005-295 (H 1436) directs the North Carolina Sentencing and Policy Advisory Commission (Sentencing Commission) to study whether capital sentencing law should include as an aggravating factor that the capital felony was committed when the defendant knew the behavior was prohibited by a valid protective order entered under G.S. Chapter 50B or by a valid protective order entered by the courts of another state or an Indian tribe. The report is due by May 1, 2006.

### **Domestic Violence**

S.L. 2005-356 (H 569) creates a sixteen-member legislative committee to "examine, on a continuing basis, domestic violence issues in North Carolina in order to make on-going recommendations to the General Assembly on ways to reduce the incidences of domestic violence, and to provide additional assistance to victims of domestic violence." The legislation also requires the AOC to study and review the use of global positioning satellite technology to track criminal offenders, to expand the family court model to additional districts as resources allow, and to study elements of the family court model that can be implemented without additional funding. The act directs DOC to study and report on measures the Division of Community Corrections is taking to address the issue of supervising domestic violence offenders.

### **Other Studies**

The budget act [S.L. 2005-276 (S 622)] directs that the following studies be conducted.

- During the 2005-07 biennium, the Office of Indigent Defense Services (IDS), in consultation with the District Attorneys and the District and Superior Court Judges Conferences, is to formulate proposals to reduce costs, including decriminalizing minor traffic offenses, changing the way criminal district court is scheduled, and reevaluating the handling of capital cases.
- The Sentencing Commission is to conduct biennial recidivism studies of a sample of juveniles who have been adjudicated delinquent to assess their subsequent involvement in the juvenile and criminal justice systems.
- The DOC is to report on a pilot program using global positioning systems technology to monitor sex offenders and domestic violence offenders. The DOC also must report annually on its efforts to increase the use of electronic monitoring of offenders who violate probation as an alternative to revocation of their probation and incarceration.

*John Rubin*

