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## Criminal Law and Procedure

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The General Assembly passed three major acts affecting criminal law and procedure in 2006. One significantly expanded the obligations of and restrictions on individuals who are required to register as sex offenders. The second created a new commission to review claims of innocence by individuals who have been convicted of felonies. The third made sweeping changes to the state's impaired driving laws. The first two acts, along with the many other acts passed in 2006 that affect criminal law and procedure, are discussed here. The impaired driving act is summarized in Chapter 19, "Motor Vehicles."

### **Sex Offender Act**

In S.L. 2006-247 (H 1896), the General Assembly significantly revised the obligations of individuals required to register as sex offenders. The act is referred to here as the Sex Offender Act. The revisions have various effective dates, discussed below.

The North Carolina Attorney General's Office has prepared a summary of the sex offender registration program and the changes the General Assembly has made since the program started in 1996. The summary may be viewed at <http://www.jus.state.nc.us/ncja/sexoffen.pdf>. It identifies the effective dates of significant revisions made by the General Assembly, which are useful in understanding the registration requirements that different individuals must satisfy.

### **Length of Registration Period**

North Carolina has had two adult sex offender registration programs—a ten-year program and a lifetime program. For those subject to the ten-year program, the law has provided that their registration obligations terminated automatically after ten years. The Sex Offender Act repeals the automatic termination provision and requires a person subject to the ten-year program to continue to register beyond ten years unless a court terminates the requirement.

After ten years from the date of initial registration, a person subject to the ten-year program may petition the superior court in the district where the person resides to terminate the registration requirement. *See* G.S. 14-208.12A (setting forth procedure for petitioning court). The court may grant relief if all of the following conditions are met:

- the person has not been convicted of a subsequent offense requiring registration;
- the person demonstrates to the court that since completing his or her sentence, he or she has not been arrested for any crime that would require registration;
- the court is satisfied that the person is not a current or potential threat to public safety; and
- termination of registration complies with any federal standards applicable to the termination of registration or required as a condition of receipt of federal funds by the state.

The final requirement indicates that if federal law is revised and requires a period of registration longer than ten years, the superior court judge considering the petition may not terminate the registration requirement until that additional period of time elapses.<sup>1</sup>

These changes apply to anyone for whom the period of registration would terminate on or after December 1, 2006. This effective date means that people who are subject to the ten-year program but who have not reached the ten-year mark as of December 1, 2006, must continue to register until a court terminates their registration requirement. They no longer qualify for automatic termination of their registration obligations on their ten-year anniversary. Most of the people who have been in the ten-year program fall into this category. The sex offender program did not begin in North Carolina until January 1, 1996. Therefore, only those individuals whose ten-year registration obligations began during the first year of the sex offender program will have satisfied their obligations before the effective date of the revised statute.<sup>2</sup>

### Offenses Subject to Registration

The Sex Offender Act makes the following additional offenses subject to registration requirements. A person convicted of any of the listed offenses must register for at least ten years unless the person falls into the lifetime registration program for other reasons [for example, the person meets the definition of “recidivist” in G.S. 14-208.6(2b)].

**Statutory rape or sexual offense.** The offense of statutory rape or sexual offense of a person who is thirteen, fourteen, or fifteen years of age when the defendant is at least six years older than the person—a violation of G.S. 14-27.7A(a)—is added as a sexually violent offense under G.S. 14-208.6(5) and is therefore a “reportable conviction” under G.S. 14-208.6(4). This change applies to offenses committed on or after December 1, 2006. Statutory rape or sexual offense of a person who is thirteen, fourteen, or fifteen when the defendant is more than four but less than six years older than the person—a violation of G.S. 14-27.7A(b)—is not subject to the sex offender registration program.

**Sexual servitude.** The offense of subjecting or maintaining a person in sexual servitude—a violation of new G.S. 14-43.13, discussed further below—is classified as a sexually violent offense

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1. A new federal law, enacted July 27, 2006, extends the minimum period of registration to fifteen years and makes several other changes to the federal standards for sex offender registration programs. States are not required to implement these changes, however, until the later of three years after July 27, 2006, or one year after the U.S. Attorney General creates software for states to use in operating uniform sex offender registries and internet websites. *See* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 42 U.S.C. 16915, 16924. Superior court judges hearing termination petitions therefore may not be bound by the new fifteen-year minimum until North Carolina takes further action to implement the new federal standards. As under previous federal law, a state that fails to adopt the federal standards may lose 10 percent of the federal funds that it otherwise would receive through the Edward Byrne Memorial Justice Assistance Grant Program.

2. For these few individuals, the commencement date of their obligation is not entirely clear. G.S. 14-208.12A has provided that the ten-year registration obligation terminates ten years after the date of initial county registration. But, G.S. 14-208.7 has provided that the ten-year registration obligation commences on the defendant’s release from a penal institution or, if the defendant did not receive active time, the date of conviction. Effective December 1, 2006, the statutes were conformed to provide that the ten-year period begins on the date of initial county registration.

under G.S. 14-208.6(5). This change applies to offenses committed on or after December 1, 2006, when the statute creating the new offense became effective. The related new offenses of human trafficking (G.S. 14-43.11) and involuntary servitude (G.S. 14-43.12), also discussed below, are not subject to the sex offender registration program.<sup>3</sup>

**Out-of-state conviction.** The definition of “reportable conviction” in G.S. 14-208.6(4) is revised to include a final conviction in another state that requires registration under the sex offender registration statutes of that state. The change applies to offenses committed on or after December 1, 2006. It also applies to individuals who move into North Carolina on or after that date. Previously, the subsection applied to an out-of-state conviction only if the conviction was substantially similar to an offense against a minor or a sexually violent offense as defined by North Carolina’s sex offender statute. That part of the definition remains in effect along with the revised definition.

## Registration Obligations

The Sex Offender Act modifies and expands the obligations of individuals who are required to register in the following respects.

**In-person registration.** Revised G.S. 14-208.6A and 14-208.7 provide that an individual required to register under either the ten-year program or the lifetime program must register in person.<sup>4</sup> The requirement is effective December 1, 2006, which means that it applies to anyone still required to register as of that date. Other statutes are similarly revised to require registrants to appear in person to verify their registration information (discussed below), notify the sheriff of a temporary residence for out-of-county employment or of an intended move to another state (discussed below), and notify the sheriff of a change in academic status or educational employment [under revised G.S. 14-208.9(c) and (d), also effective December 1, 2006].

**Semiannual verification of registration information.** Revised G.S. 14-208.9A states that registrants must verify their registration information semiannually rather than annually.<sup>5</sup> The revised section also directs the sheriff to photograph the person if the picture that is on record does not provide an accurate likeness. [Under new G.S. 14-208.9A(c), a sheriff also may request a registrant to appear at the sheriff’s office between verification dates for a new photograph if the photograph on file no longer provides an accurate likeness. A willful failure to comply with the sheriff’s request for a photograph is a Class 1 misdemeanor.] This part of the Sex Offender Act is effective December 1, 2006, and applies to offenses committed on or after that date. Thus, the new procedures go into effect December 1, 2006, and a person required to register who violates the procedures on or after that date may be subject to prosecution.

The Sex Offender Act imposes a similar semiannual verification requirement, in G.S. 14-208.28, for juveniles who are required to register. Juvenile court counselors have been responsible for submitting registration information on behalf of juveniles, and the revised statute retains that procedure. The sheriff must mail a verification form to the court counselor semiannually, rather than annually, and the juvenile court counselor must obtain the necessary information from the juvenile, sign the form along with the juvenile, and return it to the sheriff. The revised statute does not require

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3. The codifier of statutes modified the statute numbers of these offenses and other provisions in the new article on Human Trafficking (Art. 10A of G.S. Ch. 14). Those statutes were originally numbered in the legislation as G.S. 14-43.4 through 14-43.7.

4. Revised G.S. 14-208.6B likewise provides that a juvenile transferred to superior court and convicted of an offense subject to registration must register in person. Registration in juvenile transfer cases is limited, however, to “sexually violent offenses” and “offenses against a minor” as defined in G.S. 14-208.6. Adults must register for those categories of offenses and, if required by the court, certain peeping offenses listed in G.S. 14-208.6(4)d.

5. Subsection (1) of G.S. 14-208.9A(a) states that the Division of Criminal Statistics of the Department of Justice must mail a verification form to the registrant on the anniversary of the person’s initial registration date “and again six months after that date.” This language suggests that registrants must verify their registration information twelve months after they initially register and then every six months thereafter. The General Assembly’s intent, however, may have been to require that registrants reverify their registration information every six months after they initially register.

the juvenile to appear in person. The change is effective December 1, 2006, and applies to offenses committed on or after that date.

**Temporary residence for out-of-county employment.** New G.S. 14-208.8A requires registrants to notify the sheriff of the county in which they're registered if they work and maintain a temporary residence outside that county for more than ten business days within a thirty-day period or for more than thirty days a year. The new requirements take effect June 1, 2007, which means that they apply to individuals still required to register as of that date.

**Moving to another state.** G.S. 14-208.9 has required registrants to notify the sheriff of the county in which they are currently registered if they move to another state. The statute is revised to require registrants to notify the sheriff at least ten days before they intend to move. The sheriff may take a new photograph of the registrant. Registrants also must notify the sheriff within ten days after they were supposed to move to another state if they change their mind and decide to remain in North Carolina. The revised requirements became effective December 1, 2006, which means that they apply to individuals still required to register as of that date.

**Violations of registration obligations.** G.S. 14-208.11 is the general punishment statute for violating registration obligations. Violations of the registration obligations listed in the statute, including the obligations discussed above, are Class F felonies, except for failing to comply with a sheriff's request for a new photograph, which is a Class 1 misdemeanor under G.S. 14-208.9A(c).

Effective for violations committed on or after December 1, 2006, all violations must be "willful." *See* G.S. 14-208.11 (general punishment statute); G.S. 14-208.9A(c) (photograph violations). Also effective that date, G.S. 14-208.11 provides that a person is deemed to have complied with the registration and verification obligations if he or she is incarcerated, notifies the officer in charge of his or her obligations, and meets his or her registration or verification obligations no later than ten days after release.

### **Restrictions on Association with Minors**

North Carolina's probation statutes contain special conditions of probation for individuals convicted of an offense requiring registration. Those conditions include restrictions on residing with a minor if the offense requiring registration involved abuse of a minor. If the abuse of the minor was sexual, the defendant may not reside in a household with a minor during the period of probation; if the abuse was physical or mental, the defendant may not reside in a household with a minor unless permitted by the court. *See* G.S. 15A-1343(b2); *see also* G.S. 15A-1368.4(b1) [setting forth similar conditions for individuals who are on post-release supervision, which last for five years after release pursuant to G.S. 15A-1368.2(c)].

In 2005, the General Assembly made it a Class 1 misdemeanor (and a Class H felony for a subsequent offense) to provide a baby-sitting service if the provider is registered as a sex offender or, when the service is provided in a home, a resident of the home is registered as a sex offender. *See* G.S. 14-321.1. The statute is limited to baby-sitting services that are for profit, for children under the age of thirteen who are not related to the provider, and for more than two hours per day while the child's parent or guardian is not on the premises.

The Sex Offender Act creates three new felonies imposing broader restrictions on contact between anyone required to register and minors.

**Residential restrictions.** New G.S. 14-208.16 makes it a Class G felony for

- a person who is required to register as a sex offender
- knowingly to
- reside within 1,000 feet
- of property on which any public or nonpublic school, or child care center as defined in G.S. 110-86(3), is located.

Subject to certain exclusions, a child care center is "an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care." *See* G.S. 110-86(3)a. The new statute does not apply to home schools as defined in G.S. 115C-563; institutions of higher education; child care centers not included in the definition in G.S. 110-86(3); and

child care centers included in that definition that are located on or within 1,000 feet of an institution of higher education where the registrant is a student or is employed.

With certain exceptions, the statute applies to individuals who are still required to register on or after December 1, 2006. The statute states that a registrant does not violate the statute if the ownership or use of the nearby property changes after he or she has established residence. [New G.S. 14-208.16(d) describes the ways a residence is considered to be established.] The effective-date provision adds that the statute does not apply to a person who established a residence before the statute's effective date, December 1, 2006.

**Restrictions on working and volunteering.** New G.S. 14-208.17(a) makes it a Class F felony for a person who is required to register as a sex offender

- to work for any person or as a sole proprietor, with or without compensation
- at any place where a minor is present if
- the registrant's responsibilities or activities include instruction, supervision, or care of a minor or minors.

The statute applies to violations committed on or after December 1, 2006.<sup>6</sup>

**Restrictions on care and custody of minor within residence.** New G.S. 14-208.17(b) makes it a Class F felony for any person

- to conduct any activity at his or her residence where
- the person accepts a minor or minors into his or her care or custody from another
- knowing that a person who resides at that location is required to register as a sex offender.

The statute applies to violations committed on or after December 1, 2006.

### Satellite Monitoring of Registrants

The Sex Offender Act creates a new satellite-based monitoring program for certain sex offenders. It appears in new Part 5 of the sex offender registration article (Article 27A of G.S. Chapter 14).<sup>7</sup> The new program applies to two categories of registrants—lifetime registrants and registrants convicted of certain offenses involving minors. Some requirements apply to both categories; others apply to only one category or the other.

**Requirements applicable to all individuals subject to satellite monitoring.** Everyone who is subject to the new program must submit to an active, continuous satellite-based monitoring system unless an active program will not work; then, the person must submit to a passive continuous satellite-based system. The system will incorporate continuous tracking of the geographic location of the person using global positioning system technology. The frequency of reporting of a person's whereabouts may range from near real-time (with an active system) to once a day (with a passive system). *See* G.S. 14-208.40.

Satellite monitoring is a mandatory condition of probation for anyone who is subject to the monitoring program [G.S. 15A-1343(b2)(7) and (8), 15A-1343.2(f1)], including during any extended period of probation [G.S. 15A-1344(e2)]. It is also a condition of any post-release supervision [G.S. 15A-1368.4(b1)(6) and (7)] or parole (G.S. 15A-1374(1)).

Each person required to submit to satellite monitoring must pay a one-time fee of \$90. The court may waive the fee for good cause. *See* G.S. 14-208.45.

**Criteria and requirements for lifetime registrants.** A person who has been found to be a sexually violent predator, who is a recidivist, or who has been convicted of an aggravated offense as those terms are defined in G.S. 14-208.6—that is, a person who is required to register for life—is subject to the new satellite monitoring program for life. *See* G.S. 14-208.40(a)(1), 14-208.42. Upon

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6. The caption of the new statute states that it prohibits "sexual predators" from working or volunteering as specified in the statute, but the body of the statute provides that all individuals who are required to register are subject to the statute's prohibitions.

7. The codifier of statutes modified the statute numbers of the provisions in the new article on satellite monitoring (Art. 10A of G.S. Ch. 14). The statutes were originally numbered in the legislation as G.S. 14-208.33 through 14-208.38.

completion of their sentences, these registrants also must remain on unsupervised probation for life.<sup>8</sup> The lifetime satellite monitoring requirement (and unsupervised probation) may be terminated by the North Carolina Post-Release Supervision Commission. New G.S. 14-208.43 sets forth the procedure for a person to request termination of the lifetime requirements.

**Criteria and requirements for registrants convicted of certain offenses involving minors.** A person who meets all of the following criteria is subject to satellite monitoring under G.S. 14-208.40(a)(2). The person

- must have been convicted of a reportable offense;
- must be required to register;
- must have committed an offense involving physical, mental, or sexual abuse of a minor; and
- requires the highest possible level of supervision and monitoring based on a risk assessment program to be developed by the Department of Correction (DOC).

A person who meets these criteria is subject to monitoring for the period of time ordered by the court. *See* G.S. 14-208.40(a)(2), 14-208.41(a). The statutes do not explicitly set an outside limit; however, the period of monitoring could be for no longer than the period during which the person is “required to register,” one of the criteria for satellite monitoring for this category of registrants. The Post-Release Supervision Commission does not have the authority to terminate the period of monitoring ordered by the court for this category of registrants. *See* G.S. 14-208.43(e).

**Violations of monitoring requirements.** Two new crimes were created in conjunction with the satellite monitoring program. Under G.S. 14-208.44(a), a person commits a Class F felony if he or she

- is required to enroll in the satellite-based monitoring program and
- fails to enroll.

It is not entirely clear at what point a person would become guilty under this statute for not enrolling. The new satellite monitoring statutes do not designate a specific event triggering the obligation to enroll, such as notice from the court upon sentencing or from the Department of Correction upon release from prison. They also do not set a deadline for enrolling after that event occurs. Consequently, the statutes do not establish a specific time for enrolling, after which a person is criminally liable for failing to enroll. The statutes establishing the obligation to register as a sex offender, in contrast, set a time for registering and provide an explicit basis for determining whether a person’s failure to register is untimely. *Compare* G.S. 14-208.8 (if person will be released from penal institution and become subject to registration obligation, penal institution must notify person of obligation to register; when person does not receive active sentence, court must notify person of obligation to register); G.S. 14-208.7 (specifies amount of time individual has to register in various circumstances—for example, ten days from release from penal institution).

G.S. 14-208.44(b) creates a second offense once a person is enrolled in the program. A person is guilty of a Class E felony if he or she

- intentionally
- tampers with, removes, or vandalizes
- a device issued as part of the satellite-based monitoring program
- to a person duly enrolled in the program.

**Effective dates.** The satellite monitoring program became effective August 16, 2006, and applies to those persons described in the applicable effective-date provision [section 15(l) of the Sex Offender

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8. The purpose of the post-sentence requirement of unsupervised probation, in G.S. 14-208.42, is unclear. There is no sentence for the court to activate if it revokes this probation. Likewise, it does not appear that a court could impose additional active time for contempt for a violation of this probation because the person already would have served all of the active time due under his or her sentence. *See generally* State v. Belcher, 173 N.C. App. 620, 619 S.E.2d 567 (2005) (defendant was entitled to credit against sentence for time incarcerated for contempt for violating probation; legislature intended that defendant be credited with all time spent in custody as result of charge). The lifetime probationary requirement could be interpreted as depriving the person of his or her citizenship rights, including the right to vote, until the requirement is terminated. *See* G.S. 13-1 (person convicted of felony who is probationer has rights of citizenship automatically restored when unconditionally discharged by Department of Correction). It seems unlikely, however, that the General Assembly intended to make such a significant change in citizenship rights through a mechanism aimed principally at implementing the satellite monitoring program.

Act]. A person subject to the monitoring program does not have to enroll until January 1, 2007, when the program is scheduled to get underway.

First, the satellite monitoring provisions apply to any offenses committed on or after August 16, 2006. Thus, a person who commits an offense on or after that date would be subject to satellite monitoring if the person meets the program criteria.

Second, the provisions apply to any person released from prison by post-release supervision or parole on or after August 16, 2006. Thus, a person who commits an offense before August 16, 2006, but is released from prison on or after that date, would be subject to the monitoring program if the person meets the program criteria; however, a person released from prison before August 16, 2006, is not subject to the program, whether or not still on post-release supervision or parole on or after that date.

Third, the provisions apply to any person who completes his or her sentence on or after August 16, 2006, and is not on post-release supervision or parole. This third category could be construed as complementing the second category and applying only to individuals who are released from prison on or after August 16, 2006, and who are not on post-release supervision or parole. For example, under structured sentencing, a person who is sentenced to prison for a Class F through I felony does not have to serve any period of post-release supervision or parole after release from prison; under this third part of the effective-date provision, such a person would be subject to the monitoring program if released from prison on or after August 16, 2006. Literally construed, however, this third category could apply more broadly and reach any person who, as of August 16, 2006, had not completed his or his sentence. Thus, it could be construed to apply to anyone still serving a probationary sentence as of that date. Such an interpretation would mean that the program includes people who did not serve active time but are on probation on or after August 16, 2006, but that the program excludes the presumably more dangerous offenders who served active time, were released before August 16, but are subject to post-release supervision or parole on or after that date.

**Funding and implementation of satellite monitoring program.** The Sex Offender Act directs the Department of Correction to use \$1.3 million of the funds appropriated for fiscal year 2006–07 to implement the satellite monitoring program. A little over \$1.2 million of that amount is designated as recurring, and five new positions within the DOC are authorized. The DOC may use additional funds if it anticipates that expenditures will exceed that amount. To implement the program, the DOC may contract with a single vendor for the necessary hardware services. The North Carolina Department of Justice also was appropriated \$200,000 in nonrecurring funds to upgrade its sex offender registry to include, among other things, geographic information system mapping. *See* Section I (Justice, Correction), Joint Conference Committee Report on the Continuation Expansion and Capital Budgets (June 30, 2006).

**Other measures.** The Department of Correction also is directed to study and develop a plan for offering mental health treatment for incarcerated sex offenders to reduce the possibility of recidivism. The DOC must consider the fiscal impact, if any, of implementing a plan and must submit a preliminary report by January 15, 2007, and a final report by October 1, 2007, to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

## Other Monitoring of Registrants

**Duties of Probation Officers.** Effective August 16, 2006, new G.S. 15A-1341(d) provides that when a court places a defendant on probation, the probation officer assigned to the case must conduct a search of the defendant's name against the registration information maintained by the Division of Criminal Statistics of the North Carolina Department of Justice. The officer may conduct the search using the internet site maintained by the division.<sup>9</sup>

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9. Revised G.S. 15A-1343.2(f) also appears to delegate to probation officers the authority to add satellite monitoring as a condition of probation for registrants subject to G.S. 14-208.40(a)(2), the more limited monitoring program. This provision may be of no effect because G.S. 14-208.40(a)(2) requires the court to set any period of satellite monitoring for such registrants.

**Duties of Division of Motor Vehicles.** The Division of Motor Vehicles (DMV) must notify each person who applies for a driver's license, learner's permit, instruction permit, or special identification card that if the person is a sex offender, he or she must register. This requirement applies regardless of how long the person has resided in the state. *See* G.S. 20-9.3.<sup>10</sup>

The following requirements, set forth in new G.S. 20-9(i), apply to applicants for a drivers license or special identification card who have resided in the state for less than twelve months.

- The DMV may not issue a license or identification card to the person until it has searched the National Sex Offender Registry to determine whether the person is currently registered as a sex offender in another state.
- If the person is registered in another state, the DMV may not issue a license or identification card until the person submits proof of registration issued by the sheriff of the county where the person currently resides.
- If the person does not appear on the National Registry, the DMV may not issue a license or identification card unless the person signs an affidavit acknowledging that if he or she is a sex offender, he or she must register.
- If the DMV is unable to access all of the information in the National Registry at the time of the person's application, the DMV may issue a license or identification card to the person but must require the person to sign an affidavit stating that he or she does not appear in the National Registry and acknowledging that he or she has been notified of the duty of sex offenders to register. The DMV also must continue to check the National Registry to obtain any missing information, and if the person is in the National Registry, the DMV must revoke the person's license or identification card and notify the sheriff of the county where the person resides. The statutes do not specify how long the revocation lasts.
- A person denied a license may obtain judicial review of a denial as provided in G.S. 20-9(i)(4).

These requirements became effective December 1, 2006, and apply to applications submitted on or after that date.

### **Assisting Violator in Eluding Arrest**

Effective for offenses committed on or after December 1, 2006, new G.S. 14-208.11A makes it a Class H felony in certain circumstances to assist a person who has failed to comply with his or her registration obligations. Under the new statute, it is a Class H felony for any person

- who has reason to believe that a sex offender is in violation of Article 27A of G.S. Chapter 14 and
- who has the intent to assist the offender in eluding arrest
- to do any of the following:
  1. withhold information from or fail to notify a law enforcement agency about the offender's noncompliance and, if known, the offender's whereabouts; or
  2. harbor, attempt to harbor, or assist another person in harboring or attempting to harbor the offender; or
  3. conceal, attempt to conceal, or assist another person in concealing or attempting to conceal the offender; or
  4. provide information to a law enforcement agency about the offender that the person knows to be false.

The section does not apply if the offender is in custody.

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10. When sex offenders convicted in other states have moved into North Carolina in the past, issues have arisen as to whether the offenders have been adequately notified of their duties to register in this state. That issue was raised in *State v. Bryant*, 163 N.C. App. 478, 594 S.E.2d 202 (2004), and the Court of Appeals concluded that the North Carolina sex offender statute failed to provide notice to out-of-state offenders and was unconstitutional as applied to those offenders. Although that decision was reversed by the North Carolina Supreme Court, 359 N.C. 554, 614 S.E.2d 479 (2005), the new statutory requirement provides a mechanism for showing that notice was given.

The unique part of this statute is that in certain circumstances it criminalizes failing to report a crime—that is, failing to notify law enforcement of an offender’s noncompliance, as provided in 1., above. Ordinarily, not reporting a crime is not itself a crime. The potential reach of the new offense is limited by the requirement that the person must have the “intent” to assist the offender in eluding arrest. A failure to report may be insufficient alone to satisfy this intent requirement. A person’s inaction may be as much the result of indifference as an intent to assist. *See also* 1 WAYNE R. LAFAYE, *SUBSTANTIVE CRIMINAL LAW* § 5.3(a), at 358 (2d ed. 2003) (for criminal law purposes, “motive” is not the same as “intent,” and even a bad motive may not make an act criminal). The intent requirement may not present the same proof difficulties for the other actions criminalized by the new statute—harboring, concealing, and providing false information. An intent to assist the offender can more easily be inferred from the overt act of harboring, concealing, or lying.

For all the variants of the new offense, the person also must have acted (or not have acted) to assist the offender in “eluding arrest.” The new statute does not define this requirement. One interpretation is that at the time of the person’s action (or inaction), law enforcement must have been trying to arrest or apprehend the offender or, at least, have been trying to locate him or her. *Compare* G.S. 20-141.5 (this offense, captioned as “Speeding to elude arrest,” requires that the defendant be fleeing or attempting to elude a law enforcement officer while the officer is performing his or her duties). The General Assembly may have used the term in a broader sense, however, to indicate that the person must have acted with the intent to assist the offender in avoiding detection, whether or not the authorities were then trying to locate the offender.

### **New and Revised Criminal Offenses in Sex Offender Act**

The Sex Offender Act creates several new offenses, in a new Article 10A, “Human Trafficking,” in G.S. Chapter 14.<sup>11</sup> It also modifies some existing offenses. The provisions apply to offenses committed on or after December 1, 2006.

**Involuntary servitude.** G.S. 14-43.2 has made it a crime to hold a person in involuntary servitude as defined in that statute. The Sex Offender Act repeals that statute and enacts a new G.S. 14-43.12, making it a Class F felony to

- knowingly and willfully
- hold another
- in involuntary servitude.

New G.S. 14-43.10(a)(3) defines the term “involuntary servitude.” The definition states that it includes labor obtained by deception, coercion, or intimidation. New G.S. 14-43.10(a)(1) and (2), in turn, define “coercion” and “deception.” Those definitions include such acts as causing or threatening bodily harm (a form of coercion) and promising benefits that the defendant does not intend to provide (a form of deception).

The statutes do not define what it means to “hold” another in involuntary servitude. This requirement may be significant, as it suggests some ongoing control or power over the person amounting to “servitude.” The statute also states that failing to deliver benefits or perform services alone is not sufficient to support a conviction.

The offense is not subject to the sex offender registration program.

**Failure of party to labor contract to report involuntary servitude.** New G.S. 14-43.12(e) provides that it is a Class 1 misdemeanor if

- any person reports a violation of the involuntary servitude statute,
- which violation arises out of a contract for labor,
- to a party to the contract, and
- the party fails to report the violation immediately to the sheriff of the county in which the violation is alleged to have occurred.

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11. The codifier of statutes modified the statute numbers of the provisions in the new Human Trafficking article. The statutes were originally numbered in the legislation as G.S. 14-43.4 through 14-43.7.

**Sexual servitude.** New G.S. 14-43.13 creates the offense of sexual servitude, a Class F felony if the victim is an adult and a Class C felony if the victim is a minor. A person commits this offense if he or she

- knowingly
- subjects or maintains another
- in sexual servitude.

New G.S. 14-43.10(a)(5) defines “sexual servitude.” The definition states that it includes “sexual activity” induced, obtained, or provided by coercion or deception or from a minor. That subsection refers, in turn, to existing G.S. 14-190.13 for the meaning of “sexual activity,” which covers a broad array of acts of a sexual nature. Inducing those acts alone does not amount to sexual servitude, however; the other elements of the offense must be met.

New G.S. 14-43.10(a)(1) and (2) define “coercion” and “deception,” discussed above in connection with the new offense of involuntary servitude. The statutes do not define what it means to “subject” or “maintain” another in sexual servitude, but as under the new involuntary servitude statute, the terms suggest some ongoing control or power over the person amounting to “servitude.” Again, failing to deliver benefits or perform services alone is not sufficient to support a conviction.

The offense of sexual servitude is classified as a sexually violent offense under G.S. 14-208.6(5) and thus is subject to the sex offender registration program. This requirement applies to offenses committed on or after December 1, 2006, when the statute creating the new offense becomes effective.

**Human trafficking.** New G.S. 14-43.11 creates the offense of human trafficking, a Class F felony if the victim is an adult and a Class C felony if the victim is a minor. A person commits this offense if he or she

- knowingly
- recruits, entices, harbors, transports, provides, or obtains by any means another person
- with the intent
- that the other person be held in involuntary or sexual servitude.

The offense is not subject to the sex offender registration program.

**Revised definition of sexual battery.** A person is guilty of sexual battery under G.S. 14-27.5A if he or she engages in sexual contact with another person in certain circumstances. Effective for offenses committed on or after December 1, 2006, the Sex Offender Act expands the definition of “sexual contact,” in G.S. 14-27.1, to include ejaculating, emitting, or placing semen, urine, or feces on any part of another person.<sup>12</sup>

**Revised definition of kidnapping.** G.S. 14-39(a) makes it kidnapping to confine, restrain, or remove a person for certain purposes. The Sex Offender Act revises the list of purposes to add holding a person in involuntary servitude in violation of new G.S. 14-43.12 (rather than repealed G.S. 14-43.2); subjecting or maintaining a person for sexual servitude in violation of new G.S. 14-43.13; and trafficking another person with the intent that the person be held in involuntary or sexual servitude in violation of new G.S. 14-43.11. Kidnapping for these or other purposes is not subject to the sex offender registration program.

## Innocence Commission

S.L. 2006-184 (H 1323) sets up a new commission, the North Carolina Innocence Inquiry Commission (Innocence Commission), to review claims of innocence by individuals who have been convicted of a felony in the North Carolina courts. New Article 92 in G.S. Chapter 15A (G.S. 15A-1460 through 15A-1475) establishes this new commission and sets forth the process for review of claims of innocence. In essence, the new article authorizes the Innocence Commission to

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12. Under legislation enacted in 2005 and applicable to offenses committed on or after December 1, 2005, sexual battery was made a reportable offense, subject to the sex offender registration program. Because it is a reportable offense, sexual battery is subject to the revised registration requirements enacted in 2006, discussed above.

investigate claims of innocence and refer meritorious cases to a special three-judge panel with the authority to dismiss the charges if it finds that the convicted person is innocent.

The act creating the Innocence Commission took effect August 3, 2006. Claims of innocence may be filed beginning November 1, 2006, except that claims of innocence by individuals convicted on a plea of guilty may not be filed until November 1, 2008. The Innocence Commission is to give priority to cases in which the convicted person is currently incarcerated solely for the crime for which he or she has filed a claim of innocence. *See* G.S. 15A-1466(2). Claims may be filed until December 31, 2010.

**Structure of Innocence Commission.** The Innocence Commission is an independent commission within the Judicial Department and receives administrative support from the Administrative Office of the Courts. It consists of eight members—a superior court judge, who serves as chair; a prosecutor; a victim advocate; a criminal defense attorney; a public member who is neither an attorney nor an employee of the Judicial Department; and two members whose vocations are within the discretion of the Chief Justice of the North Carolina Supreme Court. The Chief Justice appoints five members as specified in the act, and the Chief Judge of the North Carolina Court of Appeals appoints three members. The commission will have a director, who must be a North Carolina attorney, and the director may hire staff with the approval of the commission chair. For more detail regarding the method of appointment of Innocence Commission members, their terms, and the duties of the director, *see* G.S. 15A-1463 through 15A-1465. The 2006 appropriations act appropriates \$160,000 in recurring funds and \$50,000 in nonrecurring funds for the Innocence Commission and establishes three staff positions. *See* Section I (Judicial) of Joint Conference Committee Report on the Continuation Expansion and Capital Budgets (June 30, 2006).

**Meaning of “claim of innocence.”** The Innocence Commission is authorized to consider “claims of factual innocence,” as defined in G.S. 15A-1460(1). To qualify, a claim must be

- on behalf of a living person
- convicted of a felony in the North Carolina trial courts
- asserting the complete innocence of the felony for which the person was convicted and any reduced level of criminal responsibility relating to the crime
- for which there is some credible, verifiable evidence of innocence
- that has not been presented at trial or considered at a hearing granted through postconviction relief.

The last element of the definition requires that evidence supporting the claim be “new” in a limited sense. Thus, it requires that “some” evidence be submitted in support of the claim that was not previously presented, but all of the evidence need not meet this requirement. The definition does not require the claimant to have been unaware of the evidence or to have been unable to obtain the evidence at the time of trial; it only requires that the evidence not have been presented at a trial or at a hearing granted through postconviction relief. Evidence is not considered to have been previously presented in postconviction proceedings if it was presented in support of a postconviction request for which a hearing was not granted.

**Submission of claim and waiver of rights.** Any person, court, or agency may submit a claim of innocence to the Innocence Commission on behalf of a convicted person. The commission may informally screen and dismiss a case summarily or undertake a formal inquiry. *See* G.S. 15A-1467(a). Before the commission begins a formal inquiry, the convicted person must execute an agreement waiving his or her procedural safeguards and privileges and agreeing to provide full disclosure to the commission on matters related to his or her claim of innocence. The waiver does not apply to matters unrelated to the claim. *See* G.S. 15A-1467(b). Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed during the formal inquiry or later commission proceedings is to be referred to the appropriate authority. Evidence favorable to the convicted person must be disclosed to the convicted person and his or her counsel, if any. *See* G.S. 15A-1468(d). If at any point during the inquiry the convicted person refuses to comply with the commission’s requests or is otherwise deemed to be uncooperative, the commission may discontinue the inquiry. *See* G.S. 15A-1467(g).

**Right to counsel.** The convicted person has the right to advice of counsel before executing a waiver of rights, and if a formal inquiry is conducted, throughout the formal inquiry. If the convicted person does not have counsel, the commission chair must determine whether the person is indigent

and, if appropriate, enter an order for the appointment of counsel. *See* G.S. 15A-1467(b); *see also* G.S. 15A-1469(e) (indigent person has right to appointed counsel in proceedings before three-judge panel).

**Notice to victim.** If the Innocence Commission proceeds with a formal inquiry, the director must use due diligence to notify the victim in the case and explain the process. The victim has the right to present his or her views and concerns throughout the commission's investigation. *See* G.S. 15A-1467(c). The victim also has the right to notice of any proceedings before the full Innocence Commission, discussed below, and to attend commission proceedings subject to limitations imposed by the commission. *See* G.S. 15A-1468(b); *see also* G.S. 15A-1469(f) (victim receives notice of hearing before three-judge panel).

**Access to evidence.** The Innocence Commission has the power to issue process to compel the attendance of witnesses and production of evidence, administer oaths, and petition the Superior Court of Wake County or of the original jurisdiction for enforcement of process or other relief. *See* G.S. 15A-1467(d), (e). In addition, all state discovery and disclosure statutes in effect at the time of the inquiry are enforceable as if the convicted person were being tried for the charge being investigated by the commission. *See* G.S. 15A-1467(f).

**Innocence Commission proceedings.** G.S. 15A-1468 details the procedures before the Innocence Commission once the formal inquiry is completed. All relevant evidence from the inquiry must be presented to the full commission, which may hold a public hearing or keep the proceedings closed. *See* G.S. 15A-1468(a). After reviewing the evidence, the commission votes on whether to refer the case for review by a three-judge panel. In cases in which the convicted person did not plead guilty, five or more commission members must find sufficient evidence of innocence for the case to be referred for judicial review. In cases in which the convicted person pled guilty, all eight commission members must find sufficient evidence of innocence. *See* G.S. 15A-1468(c). The Innocence Commission must issue an opinion, whether it finds sufficient or insufficient evidence of innocence. If a case is referred to a three-judge panel, all of the records in support of the commission's conclusion, including a transcript of the hearing before the commission, become public; if the case is not referred for judicial review, the files remain confidential except as otherwise provided in the new article. *See* G.S. 15A-1468(e).

**Review by three-judge panel.** G.S. 15A-1469 details the procedures before the three-judge panel. If the Innocence Commission concludes that there is sufficient evidence of innocence to merit judicial review, the Chief Justice appoints a three-judge panel to conduct an evidentiary hearing. The panel may not include any trial judge who has had substantial previous involvement in the case. Following an order setting a date for a hearing, the State has sixty days to file a response to the commission's opinion. The district attorney of the district of conviction represents the State at the hearing. The panel may compel the testimony of any witness, including the convicted person. The convicted person has the right to be present but may not assert any privilege or prevent any witness from testifying. If the three-judge panel unanimously finds by clear and convincing evidence that the convicted person is innocent of the charges, it enters a dismissal of the charges. If the vote is not unanimous, the panel denies relief.

**Finality of proceedings and availability of other relief.** The decisions of the Innocence Commission and the three-judge panel are final and are not subject to review. *See* G.S. 15A-1470(a). Submission of a claim to the Innocence Commission does not adversely affect the right to other postconviction relief. *See* G.S. 15A-1470(b); G.S. 15A-1411(d) (claim to Innocence Commission does not constitute motion for appropriate relief and does not affect right to relief under postconviction statutes). Revised G.S. 15A-1417(a) provides that a court may, in ruling on a motion for appropriate relief, refer a claim of factual innocence to the Innocence Commission; but, the revised statute does not require the court to refer such claims to the Innocence Commission if other grounds exist for relief (for example, a violation of the person's constitutional rights).

## Criminal Offenses

**Restrictions on sale of pseudoephedrine.** In 2005 the General Assembly enacted several restrictions on the sale of pseudoephedrine, an ingredient used in lawful cold medication and in the illegal manufacture of methamphetamine. *See* G.S. Chapter 90, Article 5D (Control of Methamphetamine Precursors), G.S. 90-113.50 through 90-113.60. Effective for offenses committed on or after August 3, 2006, S.L. 2006-186 (S 686) revises these statutes to prohibit the retail sale of pseudoephedrine products, whether in the form of a tablet, caplet, or gel cap, except in blister packages; this restriction previously applied only to tablets or caplets containing more than 30 milligrams of pseudoephedrine. The revised statutes also prohibit the sale of more than two packages containing a combined total of more than 3.6 grams of any pseudoephedrine product per day; the previous limit was two products containing more than 6 grams. New G.S. 90-113.61 provides that certain pseudoephedrine products are not subject to the article's restrictions but are subject to the requirements of the federal Combat Methamphetamine Act of 2005, a part of the USA Patriot Improvement and Reauthorization Act of 2005 (Pub. L. No. 109-177).

**Disorderly conduct at funeral.** Effective for offenses committed on or after December 1, 2006, S.L. 2006-169 (S 1833) creates a new disorderly conduct offense involving funerals. A person violates new G.S. 14-288.4(a)(8) if he or she

- intentionally causes a public disturbance
- by engaging in conduct with the intent to impede, disrupt, disturb, or interfere
- with the orderly administration of any funeral, memorial service, or family processional to the funeral or memorial service or with the normal activities and functions in facilities where a funeral or memorial service is taking place.

The new provision states that it includes military funerals, services, and family processions. It also specifies that certain conduct during, or within one hour before or after, a funeral or memorial service constitutes disorderly conduct—for example, displaying within 300 feet of the ceremonial site any visual image that conveys fighting words or actual or imminent threats of harm toward any person or property associated with the service.

A first offense is a Class 2 misdemeanor, a second offense is a Class 1 misdemeanor, and a third or subsequent offense is a Class I felony.

**Assault on handicapped person.** G.S. 14-32.1 is a specialized assault statute imposing enhanced punishments for assault on a handicapped person. Effective for offenses committed on or after December 1, 2006, S.L. 2006-179 (S 488) increases the offense of simple assault or battery on a handicapped person from a Class 1 to a Class A1 misdemeanor. This change brings the punishment for this offense in line with such offenses as assault on a child and assault on a female, both Class A1 misdemeanors.

**Harassment of participant in neighborhood watch program.** S.L. 2006-181 (H 1120) authorizes cities and counties to establish neighborhood crime watch programs. As part of this initiative, the act adds G.S. 14-226.2 creating a new offense of harassing a participant in a neighborhood crime watch program, effective for offenses committed on or after December 1, 2006. A violation is a Class 1 misdemeanor and must include a minimum fine of \$300. A person commits this offense if he or she

- willfully threatens or intimidates
- an identifiable member or resident in the same household as the member of a neighborhood crime watch program
- for the purpose of intimidating or retaliating against that person for the person's participation in a neighborhood crime watch program.

The statute states that a violation includes threats or intimidation that occur while a member is traveling to or from a neighborhood crime watch meeting, actively participating in a neighborhood crime watch program activity, or actively participating in an ongoing criminal investigation.

**Dog fighting.** G.S. 14-362.2 has prohibited promoting, conducting, and related conduct involving dog fighting, making a violation a Class H felony. Effective for offenses committed on or after December 1, 2006, S.L. 2006-113 (H 2098), as amended by Section 37 of S.L. 2006-259 (S 1523), expands the statute to make it a Class H felony to engage in such conduct in connection with the

fighting of a dog with an animal other than a dog. The revised statute states that it does not prohibit the use of dogs in the lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission—in other words, using dogs to hunt.

The act also makes changes to civil remedies for animal cruelty, effective for actions commenced on or after December 1, 2006. G.S. 19A-70 has provided that in cases in which a person has been arrested for illegally fighting dogs, a shelter that has taken custody of the dogs may petition the court to require the defendant to deposit sufficient funds for the care of the dogs. S.L. 2006-113 revises that statute to authorize a petition for animal care expenses upon an arrest for a violation of any provision of G.S. Chapter 14, Article 47 (the animal cruelty statutes) or G.S. 67-4.3 (attack by dangerous dog) or upon the commencement of a civil action for an injunction under G.S. 19A-3. Under revised G.S. 19A-70, a person who is acquitted of all criminal charges, or is found in the action for an injunction not to have committed animal cruelty, is entitled to a refund of the deposit less any funds already expended for animal care (not a refund of the entire deposit as under prior law).

**Phase-out of video gaming machines.** In 2000 the General Assembly banned the introduction of new video gaming machines into North Carolina and regulated the use of machines already in the state.<sup>13</sup> Legislation enacted this session [S.L. 2006-6 (S 912), as amended by Sections 6 and 33 of S.L. 2006-259 (S 1523)] phases out video gaming machines, banning them by mid-2007. The only exceptions are for federally recognized Indian tribes, which may operate video gaming machines on Indian land, and for assemblers, repairers, manufacturers, sellers, lessors, or transporters of video gaming machines, which may perform those functions for machines to be used outside the state or by a federally recognized Indian tribe on Indian land. Unless otherwise noted, the changes appear in current G.S. 14-306.1, which is repealed effective July 1, 2007, and new G.S. 14-306.1A, which takes effect July 1, 2007. The old and new statutes contain the same definition of “video gaming machine”—essentially, a video machine, of one of the types listed (video poker, video keno, and the like), requiring payment to activate, and awarding any prizes, merchandise, cash, replays, or coupons that may be exchanged for such awards.

The act establishes various cutoff dates for the phase-out of video gaming machines. From July 6, 2006, the date the act became law, through September 30, 2006, it was permissible for a single location to operate up to three video gaming machines, as under prior law. Effective October 1, 2006, a single location may operate up to two video gaming machines. Effective March 1, 2007, a single location may operate only one video gaming machine. During these time periods, the machines may not be moved from their registered location to a new location within North Carolina. Beginning July 1, 2007, the possession and operation of video gaming machines are prohibited entirely in North Carolina unless one of the exceptions applies.

The penalty for a first violation involving a video gaming machine remains a Class 1 misdemeanor, but the penalty for a second violation is raised from a Class I to H felony and the penalty for a third or subsequent offense is raised from a Class H to G felony. These punishment changes also apply to violations involving slot machines and other gambling devices under G.S. 14-304 through 14-309, effective for offenses committed on or after July 1, 2007. A violation involving five or more video gaming machines remains a Class G felony. *See* G.S. 14-309.

Litigation is currently pending over the legality of the ban. The act provides that it is void if a court issues a final order prohibiting video gaming machines by a federally recognized Indian tribe on the ground that machines are prohibited elsewhere.

**Sexual offenses.** The Sex Offender Act (S.L. 2006-247) created and modified a number of offenses involving sexual and other conduct. The new offenses are involuntary servitude, sexual servitude, and human trafficking. The modified offenses involve sexual battery and kidnapping. The Sex Offender Act also created and modified a number of offenses involving individuals required to register as sex offenders. Those offenses are discussed under Sex Offender Act, above.

**Breaking and entering place of worship.** Effective for offenses committed on or after December 1, 2006, G.S. 14-72(b) is amended to provide that a larceny committed pursuant to a violation of

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13. The earlier act, S.L. 2000-151 (S 1542), is summarized in *Administration of Justice Bulletin* 2000/03 at 7–10 (School of Government, Oct. 2000), posted at <http://www.sog.unc.edu/programs/crimlaw/aoj200003rubin legis.pdf>.

G.S. 14-54.1 (breaking or entering building that is place of religious worship) is a felony regardless of the value of the property in question. *See* Section 4 of S.L. 2006-259. A “building that is a place of religious worship” is defined in G.S. 14-54.1(b).

**Carrying of concealed weapon by company police.** Effective October 1, 2006, G.S. 14-269(b) is amended to exempt from the prohibition on carrying a concealed weapon officers of a company police agency while discharging their official duties. Revised G.S. 74E-6(c) permits company police officers to carry concealed weapons if duly authorized by their superior officer. *See* Section 5 of S.L. 2006-259.

**Possession of antique firearm by felon.** Effective August 23, 2006, G.S. 14-409.11 is amended to provide a new definition of “antique firearm,” and G.S. 14-415.1 is amended to provide that the prohibition on the possession of a firearm by a felon does not apply to antique firearms as defined in revised G.S. 14-409.11. *See* Section 7 of S.L. 2006-259.

**Raffles by government entities.** Effective August 27, 2006, Section 3 of S.L. 2006-264 (S 602) amends G.S. 14-309.15(a) to allow a government entity to conduct a raffle. Such raffles were permitted by a prior session law, Chapter 219 of the 1993 Session Laws, which was repealed with the above amendment.

**Boating safety laws.** Effective for offenses committed on or after January 1, 2007, S.L. 2006-185 (S 948) makes numerous changes to Chapter 75A, Article 1, the Boating Safety Act. The most significant changes involving criminal law are described here.

Revised G.S. 75A-10(b1) applies the prohibition on impaired boating to the operation of all vessels on state waters, not just motorboats or motor vessels. An offense is a Class 2 misdemeanor for all vessels. (G.S. 75A-10(b) has prohibited the manipulation of water skis, surfboards, nonmotorized vessels, or similar devices while under the influence of an impairing substance, but it did not make it a per se offense to manipulate these devices while having an alcohol concentration of .08 or more.)

Revised G.S. 75A-11 requires the operator of a vessel involved in a collision or accident that results in a person’s death or disappearance to notify the nearest law enforcement agency as soon as possible. The operator also must notify the Wildlife Resources Commission within forty-eight hours of the occurrence. If the collision or accident results in property damage of \$2,000 or more, or the complete loss of a vessel, the operator must notify the Wildlife Resources Commission within ten days of the occurrence. A violation is a Class 3 misdemeanor, punishable by a fine only of up to \$250 under G.S. 75A-18.

Revised G.S. 75A-17 makes the following changes regarding law enforcement vessels:

- Law enforcement vessels are authorized to use a flashing blue light while engaged in law enforcement or public safety activities. A person other than a law enforcement officer who activates, installs, or operates a flashing blue light on a vessel other than a law enforcement vessel is guilty of a Class 1 misdemeanor.
- No vessel other than a law enforcement vessel or other emergency response vessel may use a siren. A violation is a Class 3 misdemeanor, punishable by a fine only of up to \$250 under G.S. 75A-18.
- Vessels operated on state waters must stop when directed by a law enforcement officer and must remain at idle speed or must maneuver in a way that permits the officer to come alongside the vessel. A violation is a Class 2 misdemeanor.
- Vessels operated on the waters of this state must slow to a no-wake speed when passing a law enforcement vessel that is displaying a flashing blue light and must maintain a certain distance depending on the width of the waterway. A violation is a Class 3 misdemeanor.

**Consumption of alcohol by underage person.** G.S. 18B-302(b) has prohibited the purchase or possession of alcohol by a person under the age of twenty-one. Effective for offenses committed on or after December 1, 2006, Section 26 of S.L. 2006-253 (H 1048) amends that subsection to prohibit consumption of alcohol by a person under the age of twenty-one. A violation is a Class 3 misdemeanor under G.S. 18B-302(i) if the person is nineteen or twenty years old, and a Class 1 misdemeanor under G.S. 18B-102(b) if the person is less than nineteen years old. New G.S. 18B-302(j) allows a law enforcement officer to require a person to submit to an approved alcohol screening device if the officer has probable cause to believe the person is under twenty-one and has consumed alcohol; that

subsection also provides that the results or a refusal to submit to the test are admissible in evidence. The revised statute exempts alcohol consumption by an underage person for medical, sacramental, or culinary school activities, as described in G.S. 18B-103.

**Keg sales.** Effective for offenses committed on or after December 1, 2006, Sections 2 and 3 of S.L. 2006-253 regulate keg sales. Under revised G.S. 18B-101, a “keg” is defined as a portable container designed to hold at least 7.75 gallons of beer or other malt beverage. Under new G.S. 18B-403.1, a person who purchases a keg for transportation and off-premises consumption must obtain a purchase-transportation permit from the seller, and the seller must retain the permit record for at least ninety days. A purchaser’s failure to obtain a permit is a violation of the unlawful purchase statute (G.S. 18B-303), punishable as a Class 1 misdemeanor under G.S. 18B-102(b). A seller’s first violation is punishable by only a warning under G.S. 18B-403.1(e); a subsequent violation is a Class 1 misdemeanor under G.S. 18B-102(b).

## Law Enforcement

**Enforcement of immigration laws.** One of the session’s two technical corrections acts (Section 24 of S.L. 2006-259) added a new statute authorizing state and local law enforcement officers to exercise the powers of federal immigration officers in certain circumstances. New G.S. 128-1.1 provides that any state or local law enforcement agency may authorize its law enforcement officers to perform the functions of an officer under 8 U.S.C. 1357(g) if the agency has a memorandum of understanding for that purpose with a federal agency. The federal statute establishes the parameters for these agreements, permitting the United States Attorney General to enter into agreements with state and local law enforcement agencies that authorize their officers to perform the functions of immigration officers at the expense of the state or local agency. The act states that the new state statute became effective January 1, 2006, and any actions taken between that date and the date that the act became law (August 23, 2006) are retroactively validated.

**Handgun permits.** Effective June 30, 2006, S.L. 2006-39 (H 126) revises G.S. 14-404(a)(1) to clarify that the sheriff must conduct a criminal history background check before issuing a handgun permit and must check the National Instant Criminal Background Check System (NICS). The act likewise revises G.S. 14-415.13(b) to require the sheriff to check the NICS before issuing a concealed handgun permit.

Effective August 27, 2006, Section 5 of 2006-264 amends G.S. 14-407.1 to provide that sheriffs, rather than clerks of superior court, issue purchase permits for blank cartridge pistols.

## Sentencing

**Parole review of inmates sentenced before structured sentencing.** In 2005 the General Assembly directed the Post-Release Supervision and Parole Commission to analyze the amount of time served by each parole-eligible inmate compared to the time served by offenders for comparable crimes under structured sentencing. The commission was directed to report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by October 1, 2005. *See* Section 17.28 of S.L. 2005-276 (S 622), summarized in *Administration of Justice Bulletin* 2005/08, at 18-19 (School of Government, Dec. 2005), posted at <http://www.sog.unc.edu/pubs/electronicversions/pdfs/aojb0508.pdf>. In 2006 the General Assembly revised that provision to direct the commission to conduct such an analysis for each inmate who is eligible for parole on or before July 1, 2007. It also directed the commission to report by April 1, 2007, to the above legislative committee and to the Chairs of the Senate and House Appropriations Committees and Appropriations Subcommittees on Justice and Public Safety. *See* Section 16.5 of S.L. 2006-66 (S 1741).

**Notification of parole.** Effective August 27, 2006, Section 34 of S.L. 2006-264 amends G.S. 15A-1371(b) to require that when the Post-Release Supervision and Parole Commission is considering the parole of a person sentenced to life in prison, it must notify the sheriff of the county

where the crime occurred at least thirty days beforehand. (This provision has no effect on inmates sentenced to life in prison for offenses committed after October 1, 1994, when the General Assembly eliminated the possibility of parole.)

**Sentencing for impaired driving.** S.L. 2006-253 revises the sentencing procedures for impaired driving offenses, in G.S. 20-179, in response to the U.S. Supreme Court's decision in *Blakely v. Washington*, 542 U.S. 296 (2004), which invalidated sentencing schemes in which a person could be sentenced to an enhanced sentence based on aggravating factors found by a judge rather than a jury. The new sentencing procedures are discussed in Chapter 19, "Motor Vehicles."

## Collateral Consequences and Proceedings

**Compensation for crime victims.** Effective for claims filed on or after July 1, 2006, S.L. 2006-183 (H 2060) revises Chapter 15B, which sets forth a procedure for victims of crime to apply for state funds to compensate them for their injuries and losses. The act makes two changes regarding funeral expenses: it increases from \$3,500 to \$5,000 the allowable amount for expenses related to funeral, cremation, and burial; and it includes as a collateral source of benefits, which serves to reduce any award of compensation from state funds, a contract for insurance for expenses related to a funeral, cremation, and burial. *See* G.S. 15B-2. The act also clarifies the circumstances in which an award may be denied for a claimant's failure to cooperate in the pursuit of a criminal case. Revised G.S. 15B-11(c) provides that a claim may be denied or reduced, or an award may be reconsidered, if a claimant or victim fails to cooperate, without good cause, with law enforcement agencies or in the prosecution of the case regarding the criminal acts that are the basis of the claim or award.

**Criminal record checks.** The General Assembly authorized the North Carolina Department of Justice to provide criminal history checks to the boards and departments indicated below. The record check may be conducted only with the person's consent; however, a refusal to consent gives the board or agency grounds to take adverse action against the person, such as terminating employment or denying licensure.

Effective August 1, 2006, the North Carolina Psychology Board may obtain a criminal history check of an applicant for licensure or reinstatement of a license, or of a licensed psychologist or psychological associate under investigation by the board for violating Chapter 90, Article 18A (Psychology Practice Act). *See* S.L. 2006-175 (H 1327).

Effective October 1, 2006, the Judicial Department may obtain a criminal history check of any current or prospective employee, volunteer, or contractor of the Judicial Department. *See* Section 3 of S.L. 2006-187 (H 1848).

**Forfeiture of property rights by slayers.** Effective for property passing from decedents dying on or after July 13, 2006, S.L. 2006-107 (S 1378) revises Article 3 of G.S. Chapter 31A, which bars a "slayer" from succeeding to various property rights if the slayer was found in a criminal or civil case to have willfully and unlawfully killed the decedent. The act revises the article by redefining the circumstances in which a civil case may bar a slayer's inheritance rights; making a juvenile subject to the forfeiture provisions if he or she is found delinquent for an act that, if committed by an adult, would make the adult guilty of a willful and unlawful killing of the decedent; and excluding from the term "slayer," and thus from the forfeiture of property rights, a person found not guilty by reason of insanity. The revised article also states that it preempts the common law rule preventing a person whose culpable negligence causes the death of a decedent from succeeding to the decedent's property.

## Studies

The studies bill, S.L. 2006-248 (H 1723), authorizes the Legislative Research Commission (LRC) to study several topics related to criminal law and the courts.

The LRC may study the state's discovery obligations in criminal cases in superior court, including the following topics:

- identities of informants who furnished information leading to a search warrant against the defendant,
- personal information of the victim,
- the “work product” provision in G.S. 15A-904,
- open discovery in noncapital postconviction cases, and
- any other related issues.

The LRC also may study the following topics: banning of cell phone use while driving; credit report identity theft; a good faith exception to the exclusionary rule;<sup>14</sup> habitual felon statutes; minority incarceration; driving by a person less than twenty-one years old after consuming alcohol or drugs; racial bias and the death penalty; trafficking of persons; victim restitution; the impact of undocumented immigrants on the state, including the impact on the criminal justice system and corrections; and modifying the definition of “clear proceeds” in a manner that allows the proceeds from red light camera systems to be used for the operation of such systems. An additional act [S.L. 2006-32 (H 2120), as amended by Section 8 of S.L. 2006-187 and Section 44(a) of S.L. 2006-259] charges the LRC with studying drug treatment courts, including issues relating to funding mechanisms, target populations, interagency collaboration, and any other appropriate matters.

The North Carolina Courts Commission will study the current state of the trial courts, including workloads, case backlogs, and other issues relevant to the efficient administration of justice. The commission also will examine whether the current organization of the state into judicial divisions and superior court, district court, and prosecutorial districts needs to be revised.

The North Carolina Sentencing and Policy Advisory Commission may study issues related to the conviction and sentencing of youthful offenders aged sixteen to twenty-one years of age.

A new Joint Legislative Study Committee on Sex Offender Registration and Internet Crimes Against Children will study several issues related to sex offender registration and internet crimes, including the offenses subject to registration, length of registration, verification of registration, and use of registration fees.

*John Rubin*

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14. The United States Supreme Court has created an exception to the exclusionary rule for certain good faith actions by law enforcement officers. The North Carolina Supreme Court has declined to recognize this exception, holding that the state constitution requires exclusion of evidence obtained in violation of a person’s constitutional rights regardless of whether the officers were acting in good faith. *See State v. Carter*, 322 N.C. 709, 370 S.E.2d 553 (1988).