

## 2016 Legislation Affecting Criminal Law and Procedure

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Below are summaries of 2016 legislation affecting criminal law and procedure. To obtain the text of the legislation, click on the link provided below or go to the North Carolina General Assembly's website, [www.ncleg.net](http://www.ncleg.net). (Once there, click on "Session Laws" on the right side of the page and then "2015-2016 Session" under "Browse Session Laws.") Be careful to note the effective date of each piece of legislation.

- 1. [S.L. 2016-10 \(H 357\)](#): Amendments to procedures governing admissibility of written chemical analysis results in DWI cases.** Effective for trials beginning on or after October 1, 2016, this session law amends various provisions of G.S. 20-139.1 concerning notice and demand provisions governing the admissibility of chemical analyses in DWI cases.

First, it requires the State to provide the laboratory analysis of blood or urine to the defendant "no later than 15 business days after receiving the report" (quoted language added) to avail itself of the notice and demand procedures in G.S. 20-139.1(c1). It likewise requires the State to provide the chain of custody statement to the defendant within 15 business days of receiving it to utilize G.S. 20-139.1(c3)(3) and the chemical analyst's affidavit to the defendant within 15 business days of receipt to rely on the notice and demand procedures in G.S. 20-139.1(e2).

Second, the session law amends G.S. 20-139.1 to provide that the written objection filed by the defendant under (c1), (c3)(3), or (e2) or the defendant's failure to file a written objection under those provisions "shall remain effective at any subsequent calendaring of the proceeding" (quoted language added). Thus, under the amended provisions, a defendant may not demand the appearance of an analyst or custodian for a new trial date if he or she did not demand the witness's appearance within five business days of the first proceeding for which the State provided notice.

For a comprehensive discussion of this session law, from which this brief summary was prepared, see Shea Denning, *Amendments to Notice and Demand Provisions for DWI Cases*, North Carolina Criminal Law Blog (UNC School of Government, June 22, 2016), <http://nccriminallaw.sog.unc.edu/amendments-notice-demand-provisions-dwi-cases/>.
- 2. [S.L. 2016-17 \(S 734\)](#): State health director authorized to prescribe opioid antagonist by statewide standing order.** This session law, effective June 20, 2016, recodifies G.S. 90-106.2 as G.S. 90-12.7 (practitioner's treatment of overdose with opioid antagonist, with immunity from civil and criminal liability), and adds a provision authorizing the State Health Director to prescribe an opioid antagonist by means of a statewide standing order.
- 3. [S.L. 2016-25 \(H 256\)](#): Allow partially disabled veteran to park in handicapped parking space.** Effective June 22, 2016: (1) amended G.S. 20-37.6(e)(1) allows a partially disabled veteran to park in a handicapped parking space when displaying a partially disabled veteran special plate; and (2) amended G.S. 20-37.6(c1) allows medical certification and recertification requirements for handicapped parking privileges to be satisfied by a disability determination issued by the U.S. Department of Veteran Affairs.
- 4. [S.L. 2016-26 \(H 283\)](#): New Class I felony to violate first-degree trespass that involves reentry after removal by execution of valid order or writ of possession or the trespass occurs under color of title by person who knowingly creates false document of title or possession.** Amended G.S. 14-159.12 (first-degree trespass), effective for offenses committed on or after December 1, 2016, provides that it is a Class I felony with a mandatory minimum \$1,000 fine if (1) the offense occurs on

real property where the person has reentered after having previously been removed by the execution of a valid order or writ of possession; or (2) the offense occurs under color of title when the person had knowingly created or provided materially false evidence of an ownership or possessory interest.

5. **S.L. 2016-27 (H 292): License required from State Bureau of Investigation to operate beach bingo game and other bingo changes.** Effective for offenses committed on or after December 1, 2016, amended G.S. 14-309.14(5) provides that a person shall not operate a beach bingo game without first obtaining a license from the State Bureau of Investigation (SBI) as provided in the subsection, and operating without a license is a Class 2 misdemeanor. Effective October 1, 2016, and applicable to applications submitted and offenses committed on or after that date, amended G.S. 14-309.14(5) provides that any false information in an application for a beach bingo license is a Class 2 misdemeanor as well as cause for suspension of a license. Another section of this session law, effective June 22, 2016, substitutes “State Bureau of Investigation” for “Department of Public Safety” throughout Part 2 of Article 37 of General Statutes Chapter 14, which therefore places the SBI in charge of bingo licensing under G.S. 14-309.7 and involvement with bingo audits as set out in G.S. 14-309.11.
6. **S.L. 2016-28 (H 970): Require criminal history record checks of current or prospective employees of Office of State Controller.** Amended G.S. 143B-426.39 mandates the State Controller to require a criminal history record check of current or prospective employees, volunteers, or contractors, which must be conducted by the State Bureau of Investigation as set out in new G.S. 143B-966. Effective June 22, 2016.
7. **S.L. 2016-34 (H 958): New felony impaired boating offenses.** This session law, effective for offenses committed on or after December 1, 2016, enacts new G.S. 75A-10.3 to create new felony impaired boating offenses substantively similar to the various felony impaired driving offenses set out in G.S. 20-141.4. These new offenses are: (1) death by impaired boating, Class D felony; (2) serious injury by impaired boating, Class F felony; (3) aggravated serious injury by impaired boating, Class E felony; (4) aggravated death by impaired boating, Class D felony; and (5) repeat death by impaired boating, Class B2 felony. The session law also clarifies the fine in the punishment provision for impaired boating set out in G.S. 75A-10(b4): it is a Class 2 misdemeanor and, in addition to any other penalty imposed, a fine or not less than \$250 (current law sets out the punishment as a “Class 2 misdemeanor, punishable by a fine of not less than . . . \$250”).
8. **S.L. 2016-60 (H 436): Practice of law amendments.** This session law, effective June 30, 2016, makes various amendments to G.S. Chapter 84 concerning the unauthorized practice of law. Amended G.S. 84-2.1 provides that the practice of law does not encompass: (1) the selection or completion, as specified in the statute, of a preprinted form by a real estate broker involving a real estate transaction or a preprinted residential lease agreement by any person or website provider; and (2) the completion of or assisting a consumer in completing various agreements, contracts, etc., concerning the sale or lease of by a licensed motor vehicle dealer. New G.S. 84-2.2 provides that the practice of law, including the giving of legal advice, does not include the operation of a website by a provider that offers consumers access to interactive software that generates a legal document based on the consumer’s answers to questions presented by the software under the circumstances set out in the statute. Amended G.S. 84-10.1, which allows a private cause of action for the

unauthorized practice of law, adds injunctive relief to the current provision allowing recovery of damages and reasonable attorneys' fees.

9. **S.L. 2016-73 (H 678): Amendments concerning N.C. Innocence Inquiry Commission.** This session law makes many changes to the laws concerning the N.C. Innocence Inquiry Commission (hereafter, Commission), some of which are summarized here.

Amended G.S. 15A-1465(a) requires the Commission Director to report to the Director of the Administrative Office of the Courts, who must consult with the Commission's chair.

Amended G.S. 15A-1467 makes the following changes: (1) deletes a claimant (a person who was convicted of a felony and asserts complete innocence) from the list that includes a court, state or local agency, or claimant's counsel who can make a claim of innocence for "any conviction" (quoted language added). Instead, it allows a claimant directly to make a claim of factual innocence for convictions of homicide, robbery, offenses requiring sex offender registration, and any Class A through E felony. (2) If a convicted person requests a specific attorney with knowledge of the case, the Director must inform the Office of Indigent Defense Services of that request for its consideration. (3) The Commission may not conduct forensic testing and claimant interviews before obtaining the convicted person's signed agreement. (4) Absent a showing of good cause and the Commission chair's approval, if there is a formal inquiry concerning a claim of factual innocence, the Commission must use due diligence to notify each codefendant that an investigation will be conducted, and if the codefendant also wants to file a claim, he or she must do so within 60 days from the receipt of the notice, or the claim may be barred from a future investigation.

Amended G.S. 15A-1468 makes the following changes: (1) provides that at the completion of a formal inquiry, all relevant evidence is to be presented to the full Commission in a public hearing (a public hearing is discretionary under current law), and the Commission's rules may not exclude the district attorney or defense counsel from any part of the hearing. (2) The district attorney and the convicted person or his or her counsel may agree at any time during the formal inquiry that there is sufficient evidence of factual innocence to merit judicial review by the three-judge panel and bypass the eight-member panel. (3) If the Commission concludes that there is sufficient evidence of factual innocence to merit judicial review, the Commission must make a copy of the entire file available to the district attorney and defense counsel.

This session law is effective August 1, 2016, and applies to any claim filed or pending on or after that date. However, the session law does not abate any claim filed before that date or invalidate any action taken on a claim before then.

10. **S.L. 2016-75 (H 523): Driver's license designation of letters for American Indian.** G.S. 20-7(n) currently provides that at the request of an applicant for a driver's license, a license must contain the applicant's race. This session law, applicable to driver's licenses issued or renewed on or after October 1, 2016, provides that the letters "AI" will designate an American Indian.

11. **S.L. 2016-77 (H 253): Probation, post-release supervision, and parole changes.** Amended G.S. 15A-1343, effective for offenses committed on or after December 1, 2016, adds the following regular probation conditions: (1) waiver of all rights concerning extradition proceedings if taken into custody outside North Carolina for failing to comply with conditions imposed by a court for a felony conviction; and (2) submission to the taking of digitized photographs, including the probationer's face, scars, marks, and tattoos, to be included in the probationer's records. Upon entry of an order of supervised probation, a defendant must submit to the Division of Adult Correction for filing with the clerk a signed document stating that (1) the defendant will comply with the court-imposed conditions, and (2) if the defendant fails to comply with these conditions, the defendant waives all

rights concerning extradition proceedings if the defendant was convicted of a felony. For a discussion of the extradition waiver, see Jamie Markham, *New Probation Condition for Felons: Mandatory Waiver of Extradition*, North Carolina Criminal Law Blog (UNC School of Government, July 7, 2016), <http://nccriminallaw.sog.unc.edu/new-probation-condition-felons-mandatory-waiver-extradition/#more-6136>.

Amended G.S. 15A-1368.3(c), effective for offenses committed on or after December 1, 2016, provides when a post-release supervisee or parolee is returned to prison for a three-month period, that time period may not be reduced by credit for time already served. Any credit is only applied to the maximum prison term.

Effective July 1, 2016, the State Community Corrections Advisory Board is eliminated by repealing G.S. 143B-1157 and 143B-1158, and new G.S. 143-1161 creates the Justice Reinvestment Council with membership and duties specified in the statute.

Effective July 1, 2016, amended G.S. 143B-720, 15A-1368.6, and 15A-1376 authorize preliminary and revocation hearings for post-release supervision and parole to be conducted by videoconference.

Amended G.S. 15-196.2, effective for offenses committed on or after December 1, 2016, provides that on revocation of two or more consecutive sentences as a result of a probation violation, credit for time served on concurrent confinements in response to a violation under G.S. 15A-1344(d2) (90-day confinement in response to probation violation) may be credited to one sentence only. For a discussion of the provision, see Jamie Markham, *Another New Rule for CRV Jail Credit*, North Carolina Criminal Law Blog (UNC School of Government, July 14, 2016), <http://nccriminallaw.sog.unc.edu/another-new-rule-crv-jail-credit/>.

Amended G.S. 15A-1347(c), effective for offenses committed on or after December 1, 2016, clarifies that probation supervision continues upon appeal of a probation revocation only when a person is released on bail during the pendency of the appeal.

Effective July 1, 2016, (1) amended G.S. 14-404(d), which provides exemptions from the pistol permit law, makes clear the exemption applies to probation and parole officers; and (2) amended G.S. 20-187.2 (badges and firearms of deceased or retiring officers and active officer's purchase of weapon when agency changes type of weapon) makes the statute applicable to probation and parole officers.

For a more detailed discussion of many of the provisions in this session law see Jamie Markham, *Other 2016 Legislation Related to Probation, Post-Release Supervision, and Parole*, North Carolina Criminal Law Blog (UNC School of Government, July 20, 2016), <http://nccriminallaw.sog.unc.edu/2016-legislation-related-probation-post-release-supervision-parole/>.

12. **S.L. 2016-78 (H 287): Insurance law criminal punishments; repeal of restitution provision.**

Amended G.S. 58-50-40(c) changes the current Class H felony punishment for the insurance fiduciary offense in subsection (b) as follows: (1) if the total value of losses is \$100,000 or more, it is a Class F felony; and (2) if less than \$100,000, it is a Class H felony. Amended G.S. 58-2-164 provides that it is a Class H felony if an applicant who, with the intent to deceive an insurer, knowingly violates subsection (b) to obtain auto insurance covering one or more vehicles, the operation of which requires a commercial driver's license; the offense is also punishable by a fine of not more than \$10,000 for each violation. This session law repeals G.S. 15A-1340.37(d), which bars a third party (e.g., insurance company) from benefiting by restitution when it is liable to indemnify or has paid indemnity to an aggrieved party, but it does not bar the court from requiring a defendant to pay

complete restitution to the aggrieved party for total amount of the loss or damage caused by the defendant. All of the provisions discussed above are effective December 1, 2016.

13. **S.L. 2016-81 (H 289): Money transmitters act punishments.** This lengthy session law, effective October 1, 2015, creates in G.S. Chapter 53, the “North Carolina Money Transmitters Act,: in which violations of the act may qualify as Class 1 misdemeanors (making a material, false statement in a document; engaging in the money transmission business without a license; and violating any provision for which a penalty is not specifically provided). These misdemeanors are set out in new G.S. 53-208.58.

14. **S.L. 2016-87 (H 1044): Blue Alert System established for apprehending suspects who kill or seriously injure officers; Silver Alert System change; weapon confiscation amendment; and vehicle registration and title change.** This session law makes a variety of unrelated changes. All are effective July 11, 2016, unless otherwise noted.

New G.S. 143B-1023 establishes the Blue Alert System within the North Carolina Center for Missing Persons. The system is to aid in the apprehension of a suspect who kills or inflicts serious bodily injury on a law enforcement officer by providing a statewide system for the rapid dissemination of information concerning the suspect.

Amended G.S. 143B-1022 broadens the scope of the Silver Alert System to include not only a missing person with dementia, but also Alzheimer’s disease or a disability that requires the person to be protected from potential abuse or other physical harm, neglect, or exploitation.

Amended G.S. 14-269.1(4b) adds the designee of the head or chief of the law enforcement agency who may, in addition to the head or chief, make a written request for a firearm confiscated by a court after a conviction of specified offenses.

Amended G.S. 20-54, effective for violations committed on or after October 1, 2016, requires the Division of Motor Vehicles to refuse registration and title when it has been notified by the State Highway Patrol that a vehicle owner has failed to pay any civil penalty and fees imposed by SHP for a violation of Part 9 (size, weight, construction, and equipment of vehicles), Article 3, G.S. Chapter 20.

The definition of “emergency” in G.S. 166A-19.3(6) of the Emergency Management Act is expanded to include terrorism, public health or explosion-related cause, or technological failure or accident.

15. **S.L. 2016-88 (H 972): Law enforcement disclosure of body-worn and dashboard camera videos and audios; authorization of needle and hypodermic syringe exchange programs.** This session law encompasses two separate issues: (1) a law enforcement agency’s disclosure of video and audio recordings captured by a body-worn camera, dashboard camera, and any other video and audio recording device; and (2) the authorization of needle and hypodermic syringe exchange programs.

**Law enforcement disclosure of body-worn and dashboard camera videos and audios.** The session sets out in new G.S. 132-1.4A the conditions when a law enforcement agency must or may disclose videos and audios captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or its personnel when carrying out law enforcement responsibilities. These provisions are effective October 1, 2016, and apply to all requests made on or after that date for the disclosure or release of a recording.

The statute provides that these recordings are not public records under G.S. 132-1 or personnel records under G.S. Chapter 126, G.S. 160A-168, or G.S. 153A-98. It provides that the head of a law enforcement agency may only disclose a recording to a person whose image or voice is in the recording and specified personal representatives of that person whose image or voice is in the

recording (e.g., personal representative of minor, deceased person, incapacitated person). The statute sets out the factors an agency may consider in determining if a recording is to be disclosed, and authorizes an appeal to superior court if disclosure is denied or is not made within three days after the request for disclosure. A court may not award attorney fees to any party to a lawsuit brought pursuant to this statute.

A law enforcement agency is required to disclose a recording without a court order to a district attorney for review of potential criminal charges, to comply with discovery requirements in a criminal prosecution, for use in criminal proceedings in district court, or any other law enforcement purpose.

New G.S. 153A-458, 160A-490.1, 114-64, and 15A-220 all provide that a law enforcement agency that uses the services of the State Bureau of Investigation or the North Carolina State Crime Laboratory to analyze a recording must, at no cost, provide access to a method to view and analyze the recording on the request of the SBI or the Crime Laboratory.

**Authorization of needle and hypodermic syringe exchange programs.** New 90-113.27, effective July 11, 2016, provides that any governmental or nongovernmental organization, including a local or district health department or an organization that promotes scientifically proven ways of mitigating health risks associated with drug use and other high-risk behaviors, may establish and operate a needle and hypodermic syringe exchange program. A program must offer specified items or services, including: (1) disposal of used needles and hypodermic syringes; (2) provide needles, hypodermic syringes, and other injection supplies at no cost and in quantities sufficient to ensure they are not shared or reused (no public funds may be used to purchase them); and (3) access to naloxone hydrochloride kits to treat drug overdoses. Limited immunity against prosecution is provided to employees, volunteers, or participants of a program concerning the needles, hypodermic syringes, or other injection supplies, including residual amounts of a controlled substance on them when obtained from or returned to a program.

16. **S.L. 2016-90 (H 959): Motor vehicle and related changes.** This session law, effective July 11, 2016, unless otherwise provided, makes many motor vehicle and related changes in its 19 pages. A few of them are discussed here. For a detailed and more complete discussion of the bicycle provisions in this session law, see Shea Denning, *Traffic Laws Amended to Address Cyclist Safety and Shared Use of the Roads*, North Carolina Criminal Law Blog (UNC School of Government, July 21, 2016), <http://nccriminallaw.sog.unc.edu/traffic-laws-amended-address-cyclist-safety-shared-use-roads/>.

Amended G.S. 20-129(e) (lamps on bicycles when operated at night), effective for offenses committed on or after December 1, 2016, requires that the rear lamp or reflective clothing or vest be visible from a distance of at least 300 feet to the rear of the bicycle (current law requires 200 feet and does not allow reflective clothing or vest as an alternative to the rear lamp).

Amended G.S. 20-66 adds a new provision, applicable to registration renewals on or after October 1, 2016, that the registration of a vehicle renewed by means of a new registration plate expires at midnight on February 15 of each year.

Amended G.S. 20-48 (DMV giving notice), effective October 1, 2016, provides that instead of providing notice by personal delivery or U.S. mail, the Division of Motor Vehicles (DMV) may give notice under Chapter 20 by e-mail or other electronic means if the person to be notified has consented to receiving notices in such a manner and has provided the DMV with an e-mail address or other like electronic address (see the provisions for doing in G.S. 20-48).

Amended G.S. 20-57(c) and repealed G.S. 20-176(a1)(2) eliminate an owner's requirement to sign a registration card, effective for registration cards issued on or after December 1, 2016.

Amended G.S. 4.01 (definitions), effective for offenses committed on or after December 1, 2016, adds definitions of "electric assisted bicycle," "motor-driven bicycle," and "moped." The moped



definition is essentially the same one that currently is located in G.S 105-164.3(22), except the new definition excludes a motor-driven bicycle or electric assisted bicycle, and adds that the moped's motor may be powered by electricity, alternative fuel, motor fuel, or a combination of each.

Amended G.S. 20-166.1(e) provides that on the request of the driver of the motor vehicle involved in the accident or the insurance agent or company, the officer writing the accident report may forward an uncertified report to the insurance agent or company if the officer is satisfied that a certified copy of the report has been requested from the DMV and the applicable fee paid.

Amended G.S. 63-96 (permit required for commercial operation of unmanned aircraft systems) changes the minimum age to be issued a permit from 17 to 16.

- 17. [S.L. 2016-93](#) (H 992): Industrial hemp production criminal penalties.** Currently, Article 50E of G.S. Chapter 106 contains provisions that regulate industrial hemp production in North Carolina. This session law, effective for offenses committed on or after December 1, 2016, adds new G.S. 106-568.57 to set out the following criminal penalties: (1) a person who manufactures, delivers, purchases, etc., marijuana on property used for industrial hemp production is guilty of a Class I felony (this punishment may be imposed in addition to any other punishments provided by law); (2) a person who provides the Industrial Hemp Commission with false or misleading information concerning a license application or renewal, inspection, or investigation is guilty of a Class 1 misdemeanor; and (3) a person who tampers with or adulterates a lawfully planted industrial hemp crop is guilty of a Class 1 misdemeanor.

- 18. [S.L. 2016-94](#) (H 1030): 2016 Appropriations Act.** This session law makes base budget appropriations for current operations and other changes. Unless otherwise noted, the provisions are effective July 1, 2016. The section numbers and pages of the session law are provided to facilitate locating the provisions.

**Right of entry to enforce certain sanitation requirements.** G.S. 113-221.2 requires the Marine Fisheries Commission to adopt rules establishing sanitation requirements to harvest scallop, shellfish, and crustaceans of in-state origin and also may regulate those shipped into the state. This session law enacts G.S. 113-221.5 to grant the Secretary of Environmental Quality and a local health director the delegable right of entry on premises when entry is necessary to enforce these provisions. If consent to enter is not obtained, an administrative inspection warrant may be obtained under G.S. 15-27.2. If an imminent hazard exists, a warrant is not required. (Section 14.15, page 124).

**Statewide Misdemeanant Confinement Program.** G.S. 148-10.4(e) (operating and administrative expenses) is repealed. Of the funds appropriated to the program, (1) \$1.0 million is transferred to the N.C. Sheriffs' Association to support the program and the association's administrative and operating expenses; and (2) \$225,000 to the Division of Adult Correction for its administrative and operating expenses for the program. (Section 17.C.1.(c), page 141).

**N.C. Justice Academy to develop social media course for officers.** The academy must develop and make available to law enforcement officers an online training course on using social media, including methods officers can take to protect their personal information. (Section 18.1, page 144).

**Study capital case prosecutions.** The Office of Indigent Defense Services (hereafter, Office), in consultation with the Conference of District Attorneys, must study changes that can be made to the current system of identifying—from the pool of cases in which a defendant is charged with first-degree or undesignated murder—those that merit the cost of a capital prosecution and defense, and also study the appointment of counsel as specified in this provision.

The Office must study the need for new satellite offices to handle potential capital cases at the trial level, but the Office must consider the addition of capital defenders to existing public defender

offices before making a recommendation to create separate satellite offices. If the Office determines that satellite offices should be established, it must provide specified data set out in the provision.

The Office must report its findings and recommendations from these studies to specified legislative committee chairs by March 1, 2017. (Section 19A.3, page 145).

**Pilot project concerning district court uniform attorney fee schedule.** The Administrative Office of the Courts, in consultation with the Office of Indigent Defense Services and the chief district court judges and judicial district bars of selected judicial districts, must establish and implement a pilot project to establish a uniform fee schedule for payment of attorney fees for the defense of indigent defendants in district court. Sites, criteria, time frames, and reports to legislative committee chairs are specified in this section. (Section 19A.4, pages 145-46).

**New district court judges for districts 19A and 27B.** Effective December 1, 2016, one district judge each is added to districts 19A (Cabarrus) and 27B (Cleveland and Lincoln). (Section 19B.3, pages 146-48).

**Statute setting late fees for motor vehicle registrations made permanent.** G.S. 20-88.03, enacted by Section 29.30(m), S.L. 2015-241, provides for late fees for motor vehicle registrations. It was scheduled to expire on December 31, 2017, but the session law removes the expiration provision so the statute becomes permanent. (Section 35.13, page 160).

**Division of motor vehicles authority to cancel driver's license.** Amended G.S. 20-15(a), effective for driver's licenses issued or renewed or hearings requested on or after July 1, 2016, adds the following grounds to cancel a driver's license: (1) the licensee suffers from a physical or mental disability or disease that affects the licensee's ability to safely operate a motor vehicle; and (2) the licensee has failed to submit the medical certificate required under G.S. 20-7(e) and G.S. 20-9(g), which also concerns a licensee with a physical or mental disability or disease.

19. **S.L. 2016-101 (H 550): Authorize governmental unit to transfer ownership of animal upon its service retirement.** New G.S. 20-187.4, effective October 1, 2016, authorizes a state or local government unit to transfer ownership of an animal (horse, dog, or other animal) on its service retirement to the people set out in the statute and at a price and conditions the unit determines appropriate.
20. **S.L. 2016-102 (H 1021): Changing locations where certain registered sex offenders cannot go.** This session law, effective for offenses committed on or after September 1, 2016, responds to a federal district court case, *Doe v. Cooper*, declaring G.S. 14-208.18(a)(2) unconstitutionally broad under the First Amendment and G.S. 14-208.18(a)(3) unconstitutionally vague. For an analysis of this case, see Jamie Markham, *Federal Judge Enjoins 300-Foot Rule for Sex Offenders*, North Carolina Criminal Law Blog (UNC School of Government, April 28, 2016), <http://nccriminallaw.sog.unc.edu/end-300-foot-rule/>. For a discussion of this session law, see Jamie Markham, *Sex Offender Premises Restrictions Revised in Response to Doe v. Cooper*, North Carolina Criminal Law Blog (UNC School of Government, July 28, 2016), <http://nccriminallaw.sog.unc.edu/sex-offender-premises-restrictions-revised-response-doe-v-cooper/>.

The current statute lists three locations where certain registered sex offenders cannot go, and if they do, it is a Class H felony. This session law does not change the locations set out in G.S. 14-208.18(a)(1) and 14-208.18(a)(2). The third location, set out in G.S. 14-208.18(a)(3), is revised to include any place where minors frequently congregate, including, but not limited to, libraries, arcades, amusement parks, recreation parks, and swimming pools, when minors are present. The current statute simply describes the location as any place where minors gather for regularly scheduled educational, recreational, or social programs. The session law adds a fourth location in



new G.S. 14-208.18(a)(4): the State Fairgrounds, Western Agricultural Center, and other fairgrounds, but the restriction is limited to certain time periods.

The session law limits the application of subdivisions (a)(1), (3), and (4) in G.S. 14-208.18 to registered sex offenders who committed certain offenses or an offense when the victim was under 18 years old (the current statute is similar but lists the victim's age as under 16). The application of subdivision (2) in G.S. 14-208.18 is likewise limited to certain offenses in the same way as the other subdivisions, but only when a finding has been made in any criminal or civil proceeding that the offender presents or may present a danger to minors under the age of 18. It also includes an offense committed when the victim was under 18 years old.

There is a provision in the session law restoring G.S. 14-208.18(a)(2) to its original wording if the court's ruling is stayed or reversed. And there is a similar provision concerning G.S. 14-208.18(a)(3).

- 21. [S.L. 2016-107 \(S 508\): Pretrial release, bondsmen, and mediation changes.](#)** Amended G.S. 15A-534, effective December 1, 2016: (1) requires that a pretrial release order be given, in addition to the defendant, to the surety or an agent who is executing the bond for the defendant, and (2) an obligor's obligation is terminated earlier than the entry of judgment if the court has placed the defendant on probation under a deferred prosecution or conditional discharge. Amended G.S. 15A-544.7(d), effective for bonds executed on or after December 1, 2016, provides that in addition to prohibiting a surety from being a surety on a bail bond in the county in which a judgment has been docketed until that judgment is satisfied in full, no professional bail bondsman, bail agent, or runner whose name appears on a bond posted in that person's licensed capacity for which a final judgment of forfeiture has been entered may sign any bond in any licensed capacity statewide until the judgment is satisfied in full.

Amended G.S. 58-71-80, effective October 1, 2016: (1) adds the failure to pay federal income tax as well as related matters as grounds for suspension, revocation, or non-renewal of a bail bondsmen or runner's license, (2) provides that the Commissioner of Insurance (hereafter, Commissioner), retains the authority to enforce G.S. Chapter 58's provisions and impose any penalty against the person under investigation for or charged with a violation even if the person's license or registration has been surrendered or lapsed, and (3) the Commissioner may order summary suspension of a license based on a good cause belief that emergency action is required to protect public health, safety, or welfare or to avoid significant risk of unsatisfied bond forfeitures.

Amended G.S. 7A-38.5(e) (mediation for certain criminal district court misdemeanors) provides that if a case is not resolved through mediation within 45 days (current law, 30 days) of referral, "or if any party declines to enter into mediation," (quoted language added), the court may proceed with the case as a criminal action. It makes clear that a case for mediation may be generated by a criminal charge in a criminal summons as well as an arrest warrant, and the statute does not prohibit or delay the appointment or engagement of an attorney for a defendant in a criminal case. Amended G.S. 7A-38.7 requires that the dispute resolution fee must be paid to the clerk in advance of mediation, and sets out provisions that could permit allocation of the fee among the defendant and others. The changes set forth in this paragraph apply to criminal cases referred to mediation on or after October 1, 2016.

- 22. [S.L. 2016-110 \(H 1080\): Criminal history checks for applicants for employment with Achievement School District.](#)** This session law, effective July 22, 2016, establishes the Achievement School District under the administration of the State Board of Education, and new G.S. 115C-75.6(i) requires applicants for employment to undergo criminal history checks under G.S. 115C-297.1.

23. **S.L. 2016-113 (S 770): Criminal penalties for improper bedding; culling feral swine from aircraft; steroid permitted for veterinary use.** Amended G.S. 106-65.105D, effective for offenses committed on or after December 1, 2016, adds a Class 2 misdemeanor punishment for violations of Article 4H, G.S. 106, that authorizes the Department of Agriculture and Consumer Services to enforce the program governing bedding improperly made, sanitized, or tagged. New G.S. 113-299, effective July 26, 2016, authorizes Wildlife Resources Commission employees and certain federal agencies to cull feral swine from aircraft with a landowner's written approval, but this activity is prohibited in certain coastal counties during waterfowl season. Amended G.S. 90-91(k) (Schedule III controlled substances; anabolic steroids), effective July 26, 2016, exempts from the term "anabolic steroid" chorionic gonadotropin when administered by injection for veterinary use.

24. **S.L. 2016-115 (H 424): Prohibit unlawful transfer of custody of a minor.** New G.S. 14-321.2, effective for offenses committed on or after December 1, 2016, makes it unlawful for: (1) a parent to effect or attempt to effect an unlawful transfer of custody of the parent's minor child (a child under 18); (2) a person to accept or attempt to accept custody under an unlawful transfer of custody of a minor child (with an exception if the person promptly notifies and makes the child available to law enforcement or child protective services); or (3) a person to advertise, solicit, etc., the unlawful transfer of custody of a minor child, or seek the assistance of another to do so.

The definition of "unlawful transfer of custody" means the transfer of physical custody of a minor child in willful violation of applicable adoption law or by grossly negligent omission in the care of the child, by the child's parent and without a court order or other authorization, to a person other than a relative or another person having a substantial relationship with the child. Compensation or other thing of value is not required to qualify as an unlawful transfer. There many exceptions in the statute, such as placement of a minor child with a prospective adoptive parent, consent to adoption of a minor child, etc.

A person who commits this offense is guilty of a Class 1 misdemeanor, but it is a Class G felony if the commission of the offense results in serious physical injury to the child.

25. **S.L. 2016-122 (S 326): Revising conditions under which counties and cities may periodically inspect buildings or structures; law enforcement involvement.** This session law, effective January 1, 2017, makes the same substantive changes to both G.S. 153A-364 (counties) and 160A-424 (cities) involving periodic inspections for hazardous or unlawful conditions. Amended subsection (a) of both statutes provide that when the inspection department determines that a safety hazard exists in one of the dwelling units within a multifamily building, in which the inspector believes poses an immediate threat to the occupant, the department may inspect, in the absence of a specific complaint and actual knowledge of the unsafe condition, additional dwellings units in the building. Involving periodic inspections in subsection (b) in response to a targeted effort to respond to blighted or potentially blighted conditions, it imposes a specific geographic limit to the total aggregate or targeted areas at any one time. Several changes are made in subsection (c) concerning what a city or county cannot do, particularly in (c)(iii) involving the levy of a special fee or tax on residential rental property; subsection (d) is repealed.

New subsection (e) provides that if a property is identified as being in the top 10 percent of properties with crime or disorder problems, the city or county must notify the landlord of any crimes, disorders, or other violations that will be counted against the property to allow the landlord an opportunity to attempt to correct the problems. In addition, the specified law enforcement agency (county sheriff's office in county statute; city police department in city and county sheriff's office where applicable in city statute) must assist the landlord in addressing any criminal activity, which may include testifying in court in a summary ejectment action or other matter to aid in

evicting a tenant who has been charged with a crime. If the law enforcement agency does not cooperate in evicting a tenant, the tenant's behavior or activity at issue may not be counted as a crime or disorder problem in the local ordinance, and the property may not be included in the top 10 percent of properties as a result of that tenant's behavior or activity.