2012 Legislation Affecting Criminal Law and Procedure (Aug. 17, 2012)

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Each ratified act discussed here is identified by its chapter number in the session laws and by the number of the original bill. When an act creates new sections in the North Carolina General Statutes (hereinafter G.S.), the section number is given; however, the codifier of statutes may change that number later. Copies of the bills may be viewed on the General Assembly's website at http://www.ncleg.net/.

1. **S.L. 2012-6 (S 582): Gaming on Indian lands.** Effective June 6, 2012, this act adds G.S. 14-292.2 to provide that Class III games may lawfully be conducted on Indian lands as specified in the new statute. Class III games include gaming machines, live table games, raffles, and video games as defined in the act and in statutes to which the act refers. The act repeals G.S. 14-306.1A(e), which previously addressed Class III gaming on Indian lands.

2. **S.L. 2012-7 (H 778): Innocence Commission procedures and preservation of biological evidence.** Effective June 7, 2012, and applicable to pending claims and to claims filed on or after that date, this act amends several statutes on preserving biological evidence. Amended G.S. 15A-268(a1) requires the agency that has custody of physical evidence (referred to as the custodial agency) to preserve the evidence, regardless of the date of collection, for as long as required by the preservation statutes. Amended G.S. 15A-268(a7) requires the custodial agency, if requested, to provide the defendant with an inventory of biological evidence in the agency's custody and, if evidence was destroyed based on a court order or other written directive, to provide the defendant a copy of the order or directive. Amended G.S. 15A-268(b) allows the custodial agency to dispose of evidence sooner than required by G.S. 15A-268(a6) if all of the listed conditions are met, including that the custodial agency has determined that it has no duty to preserve the evidence under new G.S. 15A-1471, a section within G.S. Chapter 15A, Article 92, North Carolina Innocence Inquiry Commission (the Commission). New G.S. 15A-1471 provides that on receiving notice from the Commission, the State must preserve all files and evidence subject to disclosure under G.S. 15A-903, the principal statute governing the defendant's right to discovery in criminal cases. The duty to preserve ceases under the new statute (although a duty to preserve may still exist under other laws) once the Commission provides notice to the State that it has completed its inquiry. The new statute gives the Commission the right to a copy of all preserved records and to inspect, examine, and test physical evidence.

   The act makes the following additional changes to Commission procedures. It adds a definition of claimant in G.S. 15A-1460 (essentially, a person who asserts complete innocence to a felony for which the person was convicted); specifies in G.S. 15A-1467(a) the people who may refer a claim of innocence to the Commission (namely, a state or local agency, claimant, or claimant's counsel); deletes from G.S. 15A-1468(b) the provision allowing the Commission to close portions of the proceedings to the victim; and revises G.S. 15A-1479 to authorize the Commission Chair to request the Attorney General (was, Director of the Administrative Office of the Courts) to appoint a special prosecutor to represent the State at Commission proceedings if there is credible evidence (was, allegation or evidence) of prosecutorial misconduct and precludes appointment as a special

prosecutor a prosecutor from the district where the convicted person was tried. The act also amends G.S. 148-82(b), the provision on compensating people who have been convicted of a felony and been imprisoned and who thereafter have had their cases dismissed through Innocence Commission proceedings, to apply only to people who pled not guilty or no contest to the charges; the act does not add this plea restriction to G.S. 148-82(a), which provides for compensation for people who have been convicted of a felony and been imprisoned and who have received a pardon of innocence from the Governor.

3. S.L. 2012-9 **(H 340): Criminal history check for certificate to transport household goods and discretionary disqualification for criminal convictions.** Effective June 7, 2012, this act adds G.S. 62-273.1 to require criminal history checks of applicants for and current holders of a certificate to transport household goods. The act adds G.S. 114-19.31 to authorize the North Carolina Department of Justice to provide the North Carolina Utilities Commission with criminal history information. New G.S. 62-273.1 also provides that if the criminal history check reveals a criminal conviction, the Commission may, although is not required to, deny an application for a certificate or revoke a certificate. The new statute lists factors such as the seriousness and date of the crime for the Commission to consider in determining the action to take.

4. S.L. 2012-12 **(H 843): Emergency management.** As part of a rewrite of North Carolina's emergency management provisions, repealing Article 1 of G.S. Chapter 166A and adding new Article 1A, this act makes the following changes affecting criminal law, effective October 1, 2012. New G.S. 166A-19.30(d) and new G.S. 166A-19.31(h) make it a Class 2 misdemeanor to violate a declaration or executive order issued by the Governor or ordinance issued by a municipality or county during a state of emergency. The act adds new G.S. 14-288.20A repeating these provisions and adding that it is a Class 2 misdemeanor to willfully refuse to leave a public building as directed in a Governor's order under G.S. 166A-19.78. The act makes additional nonsubstantive, conforming changes to G.S. Chapter 14, Article 36A, renamed as Riots, Civil Disorders, and Emergencies. The act also revises G.S. 14-415.4(e)(6) and G.S. 14-415.12(b)(8) to require denial of a petition to restore firearm rights after a felony conviction and denial of an application for a concealed handgun permit for a conviction under new G.S. 14-288.20A or former G.S. 14-288.12, 14-288.13, and 14-288.14, which are repealed by the act.

5. S.L. 2012-14 **(H 345): Move-over law.** G.S. 20-157(f) has required drivers to move over or slow their vehicles when an emergency or public service vehicle is parked or standing within twelve feet of a roadway and is giving a warning signal. Effective for offenses committed on or after October 1, 2012, this act amends G.S. 20-157(f) to expand the definition of "public service vehicle" to include utility service vehicles, including electric, cable, telephone, communications and gas vehicles, and highway maintenance vehicles with amber-colored flashing lights authorized by G.S. 20-130.2.

6. S.L. 2012-18 **(H 707): Jury lists.** Included in a lengthy revision of statutes on registers of deeds is a rewrite of G.S. 9-4 about the preparation of jury lists, effective July 1, 2012. The changes provide for the jury list to be filed with the clerk of court rather than with the register of deeds and eliminate the requirement that the name of each person on the list be written on a separate card.

These changes are incorporated in and superseded by the more extensive changes made in jury list procedures by S.L. 2012-180, summarized below.

7. S.L. 2012-28 **(H 673): Nuisance injunction for street gang activity.** Effective for offenses committed and abatement actions commenced on or after October 1, 2012, this act creates a new Article 13B (G.S. 14-50.31 through G.S. 14-50.33), the North Carolina Street Gang Nuisance Abatement Act, declaring as a public nuisance a street gang that regularly engages in criminal street gang activities (as defined in G.S. 14-50.16) and real property used by a street gang for the purpose of criminal street gang activities. The new article allows for a civil action, under Article 1 of G.S. Chapter 19, to abate the nuisance. The court may enter an order enjoining individuals named as defendants in the suit from engaging in criminal street gang activities. Such an order expires one year after entry unless earlier modified or revoked by the court. The act repeals G.S. 14-50.24, the current street gang nuisance statute.

8. S.L. 2012-35 **(H 941), as amended by** S.L. 2012-194 **(S 847): Pseudoephedrine transactions.** Effective June 20, 2012, this act amends G.S. 90-113.53 to limit retail sales of pseudoephedrine products to 3.6 grams per day (was, two packages containing a total of 3.6 grams) and 9 grams (was, three packages containing a total of 9 grams) within any thirty-day period. The act also amends G.S. 90-113.52(c) to require every retail purchaser of a pseudoephedrine product to furnish a valid, unexpired, government-issued photo identification (was, photo identification) and to provide, in writing or orally, a valid personal residential address. The act deletes the requirement in that subsection that the retailer provide the purchaser with a written form with a statement of the limits on pseudoephedrine transactions. G.S. 90-113.54 continues to require the retailer to post a sign with that information.

9. S.L. 2012-38 **(H 149): Terrorism offense.** Effective for offenses committed on or after December 1, 2012, this act adds a new Article 3A (G.S. 14-10.1), Terrorism, creating a new terrorism offense. A person is guilty of the offense if he or she:

   - commits an act of violence
   - with the intent either to
     - intimidate the civilian population at large or an identifiable group of the civilian population, or
     - influence, through intimidation, the conduct or activities of the government of the United States, a state, or any unit of local government.

   G.S. 14-10.1(a) defines an "act of violence" as one of several different crimes, including, among others, murder, manslaughter, and felonies involving assault or the use of force against another person. The offense is a separate offense from and is punishable one class higher than the underlying act of violence, except the offense is punishable as a Class B1 felony if the underlying act of violence is a Class A or B1 felony. Real and personal property used in or derived from the offense are subject to seizure and forfeiture as provided in G.S. 14-10.1(b). The act also amends G.S. 14-7.20 to make the offense of engaging in a continuing criminal enterprise a Class D felony if the

underlying felony is a violation of new G.S. 14-10.1. For a further discussion of this act, see Jessica Smith, *The New Terrorism Offense*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (July 5, 2012).

10. S.L. 2012-39 (H 176): Domestic violence changes. G.S. 15A-1343(b)(12) has authorized the court to order as a regular condition of probation attendance at and completion of an abuser treatment program if the court finds the defendant responsible for acts of domestic violence and a program approved by the North Carolina Domestic Violence Commission is reasonably available to the defendant. Effective for defendants placed on probation on or after December 1, 2012, this act revises G.S. 15A-1343(b)(12) to require that if the defendant is discharged from the program for failing to comply, such noncompliance must be reported to the court. Revised G.S. 15A-1343(b) also provides that if a defendant is required to participate in an abuser treatment program as a condition of unsupervised probation, the court must schedule a compliance review within sixty days of the entry of judgment and every sixty days thereafter until the defendant completes the program.

The act also amends G.S. 15A-1382.1(a), which provides that if the case involved an offense described in that subsection and the defendant and victim had a personal relationship as defined in G.S. 50B-1(b), the court must enter on the judgment of conviction that the case involved domestic violence. Revised G.S. 15A-1382.1(a) imposes this requirement if the defendant is convicted of an offense involving any of the acts in G.S. 50B-1(a). The act repeals G.S. 15A-1382.1(b), which addressed the authority of the court to impose special conditions of probation in domestic violence cases when the court imposed a community punishment; these provisions were made moot by the General Assembly's passage of the Justice Reinvestment Act in 2011, which significantly narrowed the differences between community and intermediate punishments.

11. S.L. 2012-40 (H 235): Criminal conviction of sexually-related offense as ground for termination of parental rights. Effective October 1, 2012, this act amends G.S. 7B-1111(a) to add as a ground for terminating a parent's rights to a child a conviction of the parent of a sexually-related offense under G.S. Chapter 14 resulting in conception of the child.

12. S.L. 2012-46 (H 199): Metal theft. Effective for offenses committed on or after October 1, 2012, this act makes several changes to the regulation of metal purchases and sales. It recodifies and renames G.S. Chapter 91A, Pawnbrokers and Cash Converters Modernization Act, as Part 1 of G.S. Chapter 66, Article 45 (G.S. 66-385 through G.S. 66-399), Pawnbrokers and Cash Converters; and recodifies and renames G.S. Chapter 66, Article 25, Regulation of Precious Metal Businesses, as Part 2 of G.S. Chapter 66, Article 45 (G.S. 66-405 through G.S. 66-414), Precious Metal Businesses. The substance of those provisions did not change.

The act adds a new Part 3 to Article 45 (G.S. 66-415 through 66-425), Regulation of Sales and Purchases of Metals, with permitting and record-keeping requirements, purchasing and transportation restrictions, and other regulations involving covered transactions. New G.S. 66-417 gives law enforcement officers the right to inspect records kept by and purchased metals in the possession of secondary metals recyclers (as defined in new G.S. 66-415). New G.S. 66-418 gives law enforcement officers the right to issue a "hold notice" if the officer has reasonable suspicion to believe nonferrous metals in the possession of a nonferrous metals purchaser (as defined in new

G.S. 66-415) has been stolen. The hold notice bars a nonferrous metals purchaser from processing or removing the items from a secondary metal recycler's fixed site for fifteen days. The officer may renew the notice for an additional thirty days. New G.S. 66-418 requires any secondary metals recycler owner convicted of certain felonies to retain nonferrous metals for seven days from the date of purchase before disposing or altering the items. New G.S. 66-424 makes a violation of any provision in new Part 3 of Article 45 a Class 1 misdemeanor for a first offense and a Class I felony for a subsequent offense; it also requires the revocation of a permit for a fixed site for six months if the owner or employees are convicted of a total of three or more violations of Part 3 within a ten-year period.

New G.S. 14-159.4 creates the new offense of:

- willfully and wantonly
- cutting, mutilating, defacing, or otherwise injuring
- any personal or real property, including any fixtures or improvements
- of another
- for the purpose of obtaining nonferrous metals.

The new statute creates five different punishment levels, from Class 1 misdemeanor to Class D felony, depending on the damage from the unlawful act. Thus, if the damage to property is less than $1,000, the offense is a Class 1 misdemeanor; if the offense results in the death of another person, the offense is a Class D felony.

13. **S.L. 2012-56 (S 816): Banking law changes.** Effective October 1, 2012, this act rewrites North Carolina's banking laws. Among the changes, the act adds the following offenses (specified in greater detail in the indicated statutes):

- New G.S. 53C-8-7 makes it a Class H felony for a bank examiner to make a false report about the condition of a bank that the examiner has examined.
- New G.S. 53C-8-8 makes it a Class 1 misdemeanor for an examiner or other employee of the Office of the Commissioner of Banks to fail to keep secret the information obtained in an examination of a bank except as otherwise provided in G.S. Chapter 53C.
- New G.S. 53C-8-9 makes it a Class 1 misdemeanor, subject to certain exceptions, for a bank or officer, director, or employee to make an extension of credit or grant a gratuity to the Commissioner of Banks, a deputy commissioner, or a bank examiner, or for them to accept an extension of credit or gratuity. A person violating this provision may be a fined a sum equal to the amount of the extension made or gratuity given.
- New G.S. 53C-8-10 makes it a Class 1 misdemeanor to willfully and maliciously make a false and derogatory statement about the financial condition of a bank.
- New G.S. 53C-8-11 creates five bank fraud offenses, including an embezzlement offense. An offense under this section involving funds of $100,000 or more is a Class C felony, and an offense involving less than $100,000 is a Class H felony.

The act repeals Article 10 of G.S. Chapter 53 containing similar crimes and other articles within that

chapter containing other bank-related crimes.

14. S.L. 2012-72 **(H 1081): Practice as a clinical addictions specialist without a license.** Effective June 26, 2012, this act revises G.S. 90-113.31A(22a) and G.S. 90-113.43 to rename a provisional licensed clinical addictions specialist as a licensed clinical addictions specialist associate and, as under prior law, make it a Class 1 misdemeanor to practice in that capacity without a license.

15. S.L. 2012-83 **(S 881): Department of Public Safety.** Effective June 26, 2012, this act makes several technical and organizational changes to the statutes governing the North Carolina Department of Public Safety. Among the changes, the act revises G.S. 14-202(m) to exempt personnel of the Division of Juvenile Justice from peeping laws when they act for security purposes or during the investigation of alleged misconduct by a person in the custody of that division; amends G.S. 143B-704(d) to rename the Division of Adult Correction's substance abuse program as the alcoholism and chemical dependency treatment program and to revise the description of the program; and revises G.S. 143B-600(a)(7) and G.S. 143B-601 to place operation of the evidence warehouse under the Office of External Affairs in the Department of Public Safety, to rename the warehouse as the "Victim Services Warehouse," and to require the Department to do the following: provide central storage and management of evidence according to G.S. Chapter 15A, Article 13 (DNA Database and Databank, G.S. 15A-266 through 15A-270.1), create a databank of statewide storage locations of postconviction evidence, provide central storage and management of rape kits according to the federal Violence against Women and Department of Justice Reauthorization Act of 2005, and provide for the storage and management of evidence.

16. S.L. 2012-127 **(H 512): Waste kitchen grease.** Effective for offenses committed on or after January 1, 2013, this act adds G.S. 14-79.2 to create the following three new offenses:

    - Taking and carrying away a waste kitchen grease container or waste kitchen grease contained therein bearing a notice that unauthorized removal is prohibited without the written consent of the owner of the container.
    - Intentionally contaminating or purposely damaging any waste kitchen grease container or grease therein.
    - Placing a label on a waste kitchen grease container knowing that it is owned by another person in order to claim ownership of the container.

    If the value of the container or grease is $1,000 or less, the offense is a Class 1 misdemeanor; if the value is more than $1,000, the offense is a Class H felony.

17. S.L. 2012-134 **(S 828): Unemployment insurance fraud and disqualification from receiving benefits.** Two aspects of this act relate to criminal law. First, effective for offenses committed on or after December 1, 2012, Section 4(a) of the act amends G.S. 96-18(a) to divide unemployment insurance fraud into two offense classes: a Class I felony if the value of the benefit wrongfully obtained is more than $400, and a Class 1 misdemeanor if the value of the benefit is $400 or less. Second, effective November 1, 2012, Section 2(b) of the act amends G.S. 96-14 to redefine misconduct that disqualifies a person from receiving unemployment insurance benefits. The

amended statute provides that the listed disqualifying acts constitute prima facie evidence of misconduct, which may be rebutted by the claimant; and, the convictions listed as acts of misconduct must be related to or connected with an employee's work or in violation of a reasonable rule or policy. For further information about disqualification from unemployment benefits and other collateral consequences of a criminal conviction, see Collateral Consequences Assessment Tool (C-CAT), an online research tool from the School of Government.

18. S.L. 2012-136 (S 416): Racial Justice Act amendments. This act primarily addresses the North Carolina Racial Justice Act, enacted in 2009 as S.L. 2009-464 (S 461). *See generally* John Rubin, 2009 Legislation Affecting Criminal Law and Procedure, ADMINISTRATION OF JUSTICE BULLETIN No. 2009/09, at pp. 32–33 (Dec. 2009). The Governor vetoed the new act, and the General Assembly overrode her veto. This summary briefly describes the changes.

Sections 1 and 2 address two statutes that are not part of the Racial Justice Act. Effective for executions scheduled after July 2, 2012, amended G.S. 15-188 provides that the superintendent of the State penitentiary must provide, in conformity with G.S. Ch. 15, Article 19 (Execution) (was, in conformity with that Article and approved by the Governor and Council of State), the necessary appliances for infliction of death and qualified personnel to perform the procedure. Effective for Rule 24 hearings scheduled on or after July 2, 2012, amended G.S. 15A-2004(b) adds the following provisions: a court may discipline or sanction the State for failing to comply with the time requirements in Rule 24 of the General Rules of Practice for the Superior and District Courts but may not declare a case as noncapital for such a failure; and, in addition to any discipline or sanctions the court may impose, the court must continue the case for sufficient time so that the defendant is not prejudiced by any delays in the holding of the Rule 24 hearing.

Sections 3 and 4 of the act address statutes previously enacted by the Racial Justice Act. Section 3 amends G.S. 15A-2011, as described below; Section 4 repeals G.S. 15A-2012, which contained the hearing procedures for Racial Justice Act claims.

Amended G.S. 15A-2011(a) provides that a finding that race was the basis of the decision to seek or impose a death sentence may be established if the court finds that race was a significant factor at the time the death sentence was sought or imposed. The amended provision states that "at the time the death sentence was sought or imposed" means the "period from 10 years prior to the commission of the offense to the date that is two years after the imposition of the death sentence."

New G.S. 15A-2011(a1) provides that a defendant who makes a motion for relief from a death sentence under the Racial Justice Act must waive, as provided in the new subsection, any objection to the imposition of life imprisonment without parole.

G.S. 15A-2011(b), which described evidence relevant to establish a finding that race was a significant factor in decisions to seek or impose the sentence of death, is deleted.

Amended G.S. 15A-2011(c) states that the defendant has the burden of proving that race was a significant factor in decisions to seek or impose the sentence of death in the county or prosecutorial district (was, the county, prosecutorial district, judicial division, or state).

New G.S. 15A-2011(d) describes evidence relevant to establish a finding that race was a significant factor in decisions to seek or impose a sentence of death. It states that evidence may

include statistical evidence derived from the county or prosecutorial district where the defendant was sentenced to death, or other evidence, that the race of the defendant was a significant factor or that race was a significant factor in decisions to exercise peremptory challenges during jury selection. It also states that evidence may include sworn testimony of personnel involved in the criminal justice system, including attorneys, prosecutors, law enforcement officers, judicial officials, and jurors.

New G.S. 15A-2011(e) states that statistical evidence alone is insufficient to establish that race was a significant factor under the Racial Justice Act article and that the State may offer evidence in rebuttal of claims or evidence of the defendant, including statistical evidence.

New G.S. 15A-2011(f) describes procedures for raising and hearing a claim that race was a significant factor in decisions to seek or impose a sentence of death in the defendant's case.

New G.S. 15A-2011(g) states that if the court finds that race was a significant factor in decisions to seek or impose a death sentence in the defendant's case, the court shall order that a death sentence not be sought or that a death sentence be vacated and the defendant resentenced to life imprisonment without parole.

The act states it is effective when it becomes law (July 2,2012, when the General Assembly overrode the Governor's veto) and applies to all capital trials held before, on, or after the effective date of the act and to all capital defendants sentenced to the death penalty before, on, or after the effective date of the act. The act contains additional uncodified provisions on the applicability of the act to motions filed, hearings commenced, and decisions issued pursuant to S.L. 2009-464—for example, the act states that it applies to postconviction motions filed before the effective date of the new act but does not apply to such motions if the court, before the effective date of the new act, made findings of fact and conclusions of law after an evidentiary hearing on the motion unless the court's order is vacated or overturned on appellate review.

19. **S.L. 2012-142 (H 950): Budget bill.** This act modifies the 2011 Appropriations Act. The Governor vetoed the act, and the General Assembly overrode her veto. Unless otherwise noted, the provisions discussed below are effective July 1, 2012.

- Section 8.9 of the act amends G.S. 115D-21(c) to authorize community colleges to increase the maximum permissible penalty for a parking violation from $5 to $25 and adds G.S. 115D-21(d) to provide that the clear proceeds of civil penalties collected under G.S. 115D-21 must be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
- Section 15.3A establishes the North Carolina Human Trafficking Commission in the Department of Justice with the powers enumerated in that section, including the power to research the occurrence of human trafficking in North Carolina, suggest policies, procedures, and legislation to eradicate human trafficking, and provide assistance to law enforcement. The Commission terminates December 31, 2014.
- Section 16.3 repeals G.S. 7A-314(f), which addressed foreign language interpreters, and states in an uncodified provision of Section 16.3 that the Judicial Department may use funds appropriated and available to the Judicial Department to provide assistance to

limited English proficient (LEP) individuals, assist the courts in the fair, efficient, and accurate transaction of business, and provide more meaningful access to the courts.

- Effective for fees waived on or after July 1, 2012, Section 16.6(b) amends G.S. 7A-304(a) to provide that the court may waive costs under that section and may waive or reduce costs under subdivisions (7) or (8) of that section (which deal with state and local crime lab costs) only if the court enters a written order, supported by findings of fact and conclusions of law, determining that there is just cause for the order. Section 16.6(a) amends G.S. 7A-38.7(a) to impose a similar requirement for waiver or reduction of dispute resolution fees in criminal cases.

20. **S.L. 2012-143 (S 820): Hydraulic fracturing.** This act authorizes hydraulic fracturing, known as fracking, in North Carolina. The Governor vetoed the act, and the General Assembly overrode her veto. As part of numerous changes and additions to the North Carolina General Statutes, Section 2(a) of the act revises G.S. 113-380, effective August 1, 2012, to provide that a violation of G.S. Ch. 113, Article 27 (Oil and Gas Conservation) is a Class 1 misdemeanor except as otherwise provided.

21. **S.L. 2012-146 (H 494), as amended by S.L. 2012-194 (S 847): Expanded authorization for continuous alcohol monitoring.** Effective for offenses committed on or after December 1, 2012, this act amends several statutes to authorize the imposition of continuous alcohol monitoring in a range of circumstances. Those circumstances are as follows.

Pretrial release. Amended G.S. 15A-534(a) authorizes a judicial official to include as a condition of pretrial release for any criminal offense that the defendant abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring (CAM) system of a type approved by the Division of Adult Correction of the Department of Public Safety. The amended subsection requires that any violation of an abstinence/CAM condition be reported by the monitoring provider to the district attorney. The act likewise amends G.S. 15A-534.1, which prescribes special pretrial release procedures for domestic violence offenses, to authorize a judge to impose the same conditions. The act repeals G.S. 15A-534(i), which authorized for CAM as a pretrial release condition for certain impaired driving offenses only.

Conditions of probation. New G.S. 15A-1343(a1)(4a) allows as a condition of community or intermediate punishment that the defendant "abstain from alcohol consumption and submit to continuous alcohol monitoring when alcohol dependency or chronic abuse has been identified by a substance abuse assessment." New G.S. 15A-1343(b1)(2c) allows this requirement to be imposed as a special condition of probation. Amended G.S. 15A-1343.2(f) expands a probation officer's delegated authority when a person has received an intermediate punishment to include requiring that the person submit to continuous alcohol monitoring when abstinence from alcohol consumption has been specified as a condition of probation.

Eliminated from G.S. 15A-1343(b) is language that barred requiring a defendant to pay the costs of a substance abuse monitoring program or other special condition of probation in lieu of, or prior to, the payments required by G.S. 15A-1343(b), which specifies the regular conditions of probation. New G.S. 15A-1343.3(b) requires that probationers pay fees for CAM directly to the monitoring provider and prohibits the provider from terminating CAM for nonpayment of fees

without court authorization.

Impaired driving offenses. Amendments to G.S. 20-28(a) permit a court, in sentencing a defendant convicted of driving while license revoked, to order abstinence from alcohol and CAM for a minimum period of 90 days as a condition of probation if the person's license was originally revoked for an impaired driving revocation.

New G.S. 20-179(k2) allows a judge to order "as a condition of special probation" for any level of punishment under G.S. 20-179, which governs sentencing for DWI and related offenses, that "the defendant abstain from alcohol consumption, as verified by a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction of the Department of Public Safety." New G.S. 20-179(k3) permits the court to authorize a probation officer to require a defendant to submit to CAM for assessment purposes if the defendant is required as a condition of probation to abstain from alcohol consumption and the probation officer believes the defendant is consuming alcohol. If the probation officer orders the defendant to submit to CAM pursuant to this provision, the defendant must bear the costs of CAM.

The act also amends the mandatory punishment provisions for Level One sentencing in G.S. 20-179(g). That subsection currently requires a minimum term of imprisonment of not less than 30 days and provides that the term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. Amended G.S. 20-179(g) permits a judge to reduce the minimum term of imprisonment to a term of not less than ten days if the judge imposes as a condition of special probation that the defendant abstain from alcohol consumption for at least 120 days and be monitored by a continuous alcohol monitoring system of a type approved by the Division of Adult Correction of the Department of Public Safety. The amended subsection provides that if a defendant is monitored on an approved CAM system before trial, up to 60 days of pretrial monitoring may be credited against the 120-day monitoring requirement for probation.

The act likewise amends the mandatory punishment for Level Two sentencing in G.S. 20-179(h). That subsection currently requires a minimum term of imprisonment of not less than seven days and provides that the term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. Amended G.S. 20-179(h) permits a judge to suspend the term of imprisonment if the judge imposes as a condition of special probation that the defendant abstain from consuming alcohol for at least 90 consecutive days, as verified by a continuous alcohol monitoring system of a type approved by the Division of Adult Correction of the Department of Public Safety. If the defendant is monitored on an approved CAM system before trial, up to 60 days of pretrial monitoring may be credited against the 90-day monitoring requirement for probation.

New G.S. 20-179(k4) provides that the judge may not impose CAM under subsections (g), (h), (k2), and (k3), the new and amended subsections discussed above, if he or she finds good cause for not requiring the defendant to pay the costs of CAM except if "the local governmental entity responsible for the incarceration of the defendant in the local confinement facility agrees to pay the costs of the system." The act repeals G.S. 20-179(h3), which required that fees and costs ordered for CAM imposed under G.S. 20-179(h1) (authorizing CAM as a condition of probation for a Level One or Two punishment) be paid to the clerk of court, who then transmitted the fees to the

monitoring entity.

Custody cases. Effective for custody orders issued on or after December 1, 2012, new G.S. 50-13.2(b2) provides that any order for custody, including visitation, may require either or both parents to abstain from consuming alcohol and to submit to CAM to verify compliance. The new subsection provides that failure to comply with the abstinence/CAM condition is grounds for civil or criminal contempt.

Additional resources. For a further discussion of this act, see Shea Denning, *Authorization for Continuous Alcohol Monitoring Expanded by S.L. 2012-146*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (July 17, 2012).

22. S.L. 2012-148 (S 635): Sentencing of juveniles to life imprisonment. North Carolina law authorizes a juvenile's case to be transferred to superior court and the juvenile to be tried as an adult for a felony allegedly committed when the juvenile was 13, 14, or 15. If convicted, the juvenile is sentenced in the same way that an adult would be sentenced for the same offense, with few exceptions. The U.S. Supreme Court held in *Roper v. Simmons*, 543 U.S. 551 (2005), that imposing the death penalty on someone who was younger than eighteen when he or she committed a capital offense violates the Eighth Amendment. Five years later, in *Graham v. Florida*, ___ U.S. ___, 130 S. Ct. 2011 (2010), the Court held that a sentence of life without the possibility of parole violates the Eight Amendment when imposed on someone who committed a non-homicide offense when younger than age eighteen. Consistent with those cases, in North Carolina the death penalty can never be imposed on someone for an offense committed before age eighteen, and a sentence of life without the possibility of parole can be imposed only in cases of first-degree murder. *See* G.S. 14-17.

On June 25, 2012, in *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455 (2012), the Supreme Court extended its holding in *Graham* and held in a capital murder case involving a juvenile defendant that an automatic sentence of life without the possibility of parole violates the Eighth Amendment. Because North Carolina required such a sentence on a juvenile's conviction for first degree murder, legislative changes were needed. The General Assembly made those changes in S.L. 2012-148, effective July 12, 2012. This act creates a new Article 93, Sentencing for Minors Subject to Life Imprisonment without Parole, in G.S. Chapter 15A. The new article authorizes a sentence of life imprisonment with the possibility of parole after 25 years for juvenile defendants convicted of first-degree murder. If the murder conviction is based solely on the felony murder rule, the court must impose this sentence. In other cases involving first-degree murder, the court must conduct a hearing, pursuant to new G.S. 15A-1477, to determine whether the defendant should be sentenced to life imprisonment with the possibility of parole or without parole. The new statute identifies mitigating factors that the defendant may submit to the judge in making this decision. New G.S. 15A-1479 describes the conditions and procedures for parole for juvenile defendants sentenced to life imprisonment with the possibility of parole.

The act applies to sentencing hearings held on or after July 12, 2012. It also applies to resentencing hearings for juvenile defendants who were younger than 18 at the time of their offense and who were sentenced to life imprisonment without parole. New G.S. 15A-1478 establishes procedures for motions for appropriate relief seeking resentencing in such cases. The

act also directs the North Carolina Sentencing and Policy Advisory Commission, in consultation with the Office of the Juvenile Defender, the Conference of District Attorneys, and other organizations and agencies identified by the Sentencing Commission, to study and report to the General Assembly by January 31, 2013, on sentencing of juveniles convicted of first-degree murder.

23. S.L. 2012-149 (S 707): School offenses and procedures, cyberbullying, magistrate charging procedures, and prayers for judgment continued for Class B1 through E felonies. This act deals primarily with offenses involving schools. The school-related changes are as follows:

- Effective July 12, 2012, new G.S. 14-33(c1) provides that school personnel who take reasonable action in good faith to end a fight or altercation between students incur no civil or criminal liability as a result of their actions; effective with the beginning of the 2012–13 school year, new G.S. 115-390.3(d) provides that no school employee may be reprimanded or dismissed for acting or failing to act to stop or intervene in an altercation between students if the employee's actions are consistent with local education board policies.
- Effective for offenses committed on or after December 1, 2012, new G.S. 14-458.2 creates the offense of cyberbullying of a school employee by a student, a Class 2 misdemeanor. G.S. 14-458.2(a) defines school employees and students as those at primary and secondary schools. G.S. 14-458.2(b) lists several ways in which the offense is committed, such as building a fake profile or website with the intent to intimidate or torment a school employee. G.S. 14-458.2(d) allows for discharge and dismissal of the case on completion of probation and, if the person qualifies, expunction under G.S. 15A-146, the statute on expunctions of dismissals. In addition, if a student is convicted of cyberbullying under G.S. 14-458.2, new G.S. 115C-366.4 requires transfer of the student to another school in the local administrative unit or, if there is not an appropriate school, another class or teacher.

The act also makes changes to the statutes on cyberbullying generally. Effective July 12, 2012, G.S. 14-453(7c) is amended to expand the definition of "profile," on which a cyberbullying offense may be based; effective for offenses committed on or after December 1, 2012, amendments to G.S. 14-458.1(a)(3), (5), and (6), which describe the ways in which a cyberbullying offense may be committed, require proof of an improper intent as described in those subsections.

The act adds and revises additional school statutes in G.S. Chapter 115C, effective with the beginning of the 2012–13 school year.

- New G.S. 115C-46.2 regulates probation officer visits at schools.
- Amended G.S. 115C-288(g) requires the principal to report to law enforcement the occurrence of certain offenses on school property when the principal has knowledge or actual notice of the occurrence (was, knowledge, reasonable belief, or actual notice). The subsection also is amended to delete the provision on demotion or dismissal of a principal who fails to make such a report.
- New G.S. 115C-289.1 requires a supervisor of a school employee to report to the principal an assault by a student against the employee resulting in physical injury when the supervisor has actual notice of the assault.

The act adds new G.S. 15A-301(b1) and (b2) to modify charging procedures by magistrates for offenses allegedly committed by school employees while discharging their duties of employment. New subsection (b1) provides that a magistrate may not issue an arrest warrant or other criminal process in such a case without the prior written approval of the district attorney or designee. This requirement does not apply to traffic offenses or offenses that occur in the presence of a law enforcement officer. New subsection (b2) allows a district attorney to decline the authority under new subsection (b1), in which case the chief district judge must appoint a magistrate or magistrates to review any application for an arrest warrant or other criminal process against a school employee for a misdemeanor allegedly committed during the discharge of employment duties. Subsection (b2) explicitly lifts this requirement if the offense is a traffic offense, the offense occurred in the presence of a law enforcement officer, or there is no appointed magistrate available to review the application; the new subsection implicitly exempts felony cases from the requirement because it applies to misdemeanors only. Subsection (b2) states that the failure to comply with the requirement does not affect the validity of any arrest warrant or other criminal process. The changes are effective on or after the date a magistrate is appointed by the chief district court judge to perform these functions.

In a change unrelated to schools, the act adds new G.S. 15A-1331B to prohibit a court from disposing of a Class B1 through E felony by a prayer for judgment continued (PJC) that exceeds 12 months. It provides further that if the court imposes a PJC in such a case, it must impose as a condition that the State pray judgment within a specific period of time not to exceed 12 months. If the State does not pray judgment within 12 months, the court must enter final judgment unless it finds that the interests of justice warrant continuing the PJC for an additional 12 months. The change applies to offenses committed on or after December 1, 2012.

24. **S.L. 2012-150 (H 203): False liens.** Effective for offenses committed on or after December 1, 2012, this act amends and enacts several statutes on the filing of false liens and similar claims. The amended statutes are as follows:

- The punishment for violation of G.S. 14-118.1, which prohibits the simulation of court process in connection with the collection of a claim, demand, or account, is increased from a Class 2 misdemeanor to Class I felony.
- The grounds for a violation of G.S. 14-118.12, which prohibits residential mortgage fraud, are expanded to prohibit knowingly filing in a public or a private record generally available to the public a document falsely claiming that a mortgage loan has been satisfied, discharged, released, revoked, or terminated or is invalid.
- The punishment for a violation of G.S. 14-401.19, which prohibits filing a false security agreement, is increased from a Class 2 misdemeanor to Class I felony.
- The punishment for a violation of G.S. 44A-12.1(c), which prohibits the filing of a claim of lien that is not authorized by statute, is for an improper purpose, or wrongfully interferes with another person, is increased from a Class 1 misdemeanor to Class I felony.

New G.S. 14-118.6 creates a new offense of filing a false lien or encumbrance, a Class I felony. A

violation is also an unfair and deceptive trade practice under G.S. 75-1.1. A person is guilty of this offense if he or she:

- presents for filing
- in a public record or a private record generally available to the public
- a false lien or encumbrance
- against the real or personal property
- of a public officer or public employee
- on account of the performance of the officer or employee's official duties
- knowing or having reason to know
- that the lien or encumbrance is false or contains a materially false, fictitious, or fraudulent statement or representation.

The new statute authorizes the register of deeds to refuse to file the lien on reasonable suspicion that it is false. If the filing is denied, the person may commence a special proceeding to determine whether the filing is appropriate as provided in new G.S. 14-118.6(b).

25. **S.L. 2012-153 (S 910): Unlawful sale, surrender, or purchase of a minor.** Effective for offenses committed on or after December 1, 2012, this act adds G.S. 14-43.14 to make the unlawful sale, surrender, or purchase of a minor a Class F felony. A person commits the new offense if he or she

- acting with willful or reckless disregard for the life or safety of a child
- participates
- in the acceptance, solicitation, offer, payment, or transfer of any compensation
- in connection with the unlawful acquisition or transfer of the physical custody of a minor.

The new prohibition does not apply to actions that are ordered by a court, authorized by statute, or otherwise lawful. An amendment to G.S. 14-322.3 also makes the prohibition inapplicable to a parent who voluntarily surrenders an infant less than seven days of age as provided in G.S. 7B-500.

The new statute provides for a minimum fine of $5,000 for a first offense and $10,000 for a subsequent offense. It also provides that a child whose parent, guardian, or custodian has sold or attempted to sell the child in violation of the new statute is an "abused juvenile" as defined by G.S. 7B-101(1) and the court may place the child in the custody of a county department of social services or any person as the court finds to be in the child's best interest. The sentencing court also must consider whether the defendant is a danger to the community and whether requiring him or her to register as a sex offender under Article 27A of G.S. Chapter 14 would further the purpose of the sex offender registration law. If the court so finds, it may enter an order requiring the person to register. The act amends G.S. 14-208.6(4) to make a conviction under the new statute a "reportable conviction" under the sex offender registration law if the sentencing court orders the person to register. Attempts, conspiracies, and solicitations to sell, surrender, or purchase a child apparently are not reportable because not specified in the revised statute. *Compare, e.g.,* G.S. 14-208.6(4)a. (specifying that an attempt to commit a sexually violent offense is reportable); G.S. 14-208.6(5) (specifying that a conspiracy or solicitation to commit a sexually violent offense is reportable).

The act requires the N.C. Conference of District Attorneys to study additional measures that may be taken to stop criminal activities involving the sale of children and to submit a final report of its findings and recommendations to the General Assembly by January 30, 2013.

26. **S.L. 2012-154 (H 54): Habitual misdemeanor larceny.** Effective for offenses committed on or after December 1, 2012, this act amends G.S. 14-72(b), which lists various circumstances in which a larceny is a Class H felony, to make a larceny a Class H felony if committed after the defendant has previously been convicted four times of a larceny as defined in new G.S. 14-72(b)(6). The new subdivision describes in detail when a prior larceny conviction counts for the new offense. Thus, a prior conviction counts if it is a conviction in North Carolina or another jurisdiction for any larceny offense under "this section" (that is, G.S. 14-72), any offense deemed or punishable as a larceny under "this section," or any substantially similar offense in any other jurisdiction, regardless of whether the prior convictions were misdemeanors or felonies. A prior conviction may be counted only if the defendant was represented by counsel or waived counsel. If a person was convicted of more than one misdemeanor larceny in a single session of district court, or in a single week of superior court or of a court in another jurisdiction, only one of the convictions count; however, convictions based on offenses that occurred in separate counties count as separate convictions.

27. **S.L. 2012-160 (H 737): Criminal history checks and disqualifications for child care providers.** Effective January 1, 2013, this act expands the scope of criminal record checks required of people who care for children in child care facilities and adds additional restrictions on who may be a child care provider in a licensed or regulated child care facility. Amended G.S. 110-90.2(a) contains a broader definition of child care providers who are subject to a criminal history check and an expanded list of offenses to be included in the record check. Amended G.S. 110-90.2(b) requires a check every three years after a person's employment starts. New G.S. 110-90.2(a1) imposes a mandatory disqualification on being a child care provider if the person is convicted of a misdemeanor or felony involving child neglect or abuse or of an offense that is a reportable conviction for sex offender registration purposes. New G.S. 110-90.2(b) imposes a discretionary disqualification from being a child care provider if the person is a habitually excessive user of alcohol, illegally uses narcotic or other impairing drugs, or is mentally or emotionally impaired to an extent that may be injurious to children.

28. **S.L. 2012-165 (S 105): Punishment for second-degree murder and deaths caused by DWI.** Second-degree murder has been classified as a Class B2 felony under G.S. 14-17. Effective for offenses committed on or after December 1, 2012, this act adds G.S. 14-17(b) to make second-degree murder a Class B1 felony except if the "malice" necessary to prove second-degree murder is based on recklessness as described in new G.S. 14-17(b)(1) or the murder is caused by the unlawful distribution of certain drugs, such as opium, in which case the offense remains a Class B2 felony. The opening sentence of new G.S. 14-17(b) states that second-degree murder as provided in the new subsection does not include a violation of G.S. 14-23.2 ("Murder of an unborn child; penalty"). The latter statute was not revised by the act and continues to state that a violation of G.S. 14-23.2(a)(3) based on recklessness is punishable in the same manner as for second-degree murder under G.S. 14-17; because second-degree murder based on recklessness remains a Class B2 felony

under new G.S. 14-17(b), a violation of G.S. 14-23.2(a)(3) based on recklessness appears to remain a Class B2 felony as well. For a further discussion of the change in punishment for second-degree murder, see Jeff Welty, *Change in Punishment for Second-Degree Murder,* N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (July 10, 2012).

The act also revises G.S. 20-141.4(b) to state that the punishment for repeat felony death by vehicle remains a Class B2 felony (was, the same as for second-degree murder); to provide that the court must sentence a defendant convicted of aggravated death by vehicle, which remains a Class D felony, to a sentence in the aggravated range; and to increase from a Class E to Class D felony the classification for felony death by vehicle and to authorize an intermediate punishment for a defendant in prior record level I.

29. S.L. 2012-168 (S 141): Trespass, motions for appropriate relief, license revocation procedures for provisional licensees, Department of Public Safety, and extension of time for forensic accreditation and certification. This act makes several changes, as follows.

Trespass. Effective for offenses committed on or after September 1, 2012, this act creates new Class A1 misdemeanor and new Class H felony trespass offenses. It is a Class A1 misdemeanor under new G.S. 14-159.12(c) for a person to:

- commit a first-degree trespass in violation of G.S. 14-159.12(a)
- on the premises of an electric, water, or natural gas utility facility as described in new G.S. 14-159.12(c) by
  - actually entering a building, or
  - climbing, going over, or otherwise surmounting a fence or other barrier to reach the facility.

It is a Class H felony under new G.S. 14-159.12(d) for a person to:

- violate new G.S. 14-159.12(c) if
  - the offense is committed with the intent to disrupt the normal operation of an electrical facility as described in G.S. 14-159.12(c)(1), or
  - the offense involves an act that places either the offender or others on the premises at risk of serious bodily injury.

Motions for appropriate relief. Effective for motions for appropriate relief filed on or after December 1, 2012, and for motions that are pending and for which no answer has been filed on or after that date, the act revises the procedures for hearing motions for appropriate relief, primarily in noncapital cases.

Revised G.S. 15A-1413 requires that motions for appropriate relief be referred to the senior resident superior court judge or chief district court judge, depending on which level of court the motion is filed, for assignment to a judge for review, hearing, and other appropriate actions. G.S. 15A-1413(b) continues to allow a judge who presided at the trial to be assigned the motion, but the motion is not required to be assigned to the presiding judge. Revised G.S. 15A-1413(b) provides that if the presiding judge is unavailable the senior resident superior court or chief district court

judge may assign the case to another judge; and G.S. 15A-1413(e) provides that the assignment of the case is in the discretion of the senior resident superior court or chief district court judge. (In the third edition of the act, proposed G.S. 15A-1413(e) stated that when practicable a motion for appropriate relief shall be assigned to the judge who presided at the trial, accepted the guilty plea, or imposed sentence; that language was omitted from later editions of the act.) G.S. 15A-1413 does not distinguish between capital and noncapital cases, but it does not appear to change the procedure for assignment of motions for appropriate relief in capital cases, which have been governed by similar assignment requirements under Rule 25 of the General Rules of Practice for the Superior and District Courts.

The act also adds new G.S. 15A-1420(b2) establishing time frames for reviewing, hearing, and ruling on motions for appropriate relief. These requirements apply specifically to noncapital cases. Thus, the new subsection requires that the case be assigned to a judge within 30 days of filing of a motion for appropriate relief, that the assigned judge take initial action within 30 days after assignment, and that the parties and judge meet other time limits. The new subsection allows for extensions of time on a proper showing. If the court does not comply with the required deadlines, a party may petition the senior resident superior court or chief district court judge to assign the motion to a different judge or may seek a writ of mandamus to obtain compliance with the deadlines. The new subsection states that the failure to meet a deadline is not ground for the summary granting of a motion for appropriate relief.

New G.S. 15A-1420(e) states that nothing in G.S. 15A-1420 precludes the parties from entering into an agreement for appropriate relief, including an agreement as to any aspect, procedural or otherwise, of a motion for appropriate relief. Presumably, agreements requiring judicial action remain subject to approval by the judge assigned to the case.

License revocations for provisional licensees. In 2011, the General Assembly enacted G.S. 20-13.3, providing for an immediate 30-day revocation of the permit or license of a provisional licensee charged with a misdemeanor or felony motor vehicle offense that is a criminal moving violation. Effective for offenses committed on or after October 1, 2012, amendments to G.S. 20-13.3 eliminate the requirement that a provisional licensee charged with a criminal moving violation be arrested and be brought before a judicial official for an initial appearance at which the revocation is issued. Instead, a law enforcement officer may issue a citation charging a provisional licensee with a misdemeanor criminal moving violation without arresting the person. When this happens, the officer must notify the provisional licensee that his or her license is subject to revocation and must expeditiously file a revocation report with the clerk of superior court. On determining that the conditions requiring revocation under G.S. 20-13.3 are satisfied, the clerk must issue a revocation order and mail it to the provisional licensee. The ensuing 30-day revocation becomes effective on the fourth day after the order is mailed.

The act also creates a procedure for challenging the lawfulness of a revocation order entered pursuant to G.S. 20-13.3. New G.S. 20-13.3(d2) permits a provisional licensee to request a hearing to contest the validity of the revocation. These review provisions are modeled on those in G.S. 20-16.5(g) for review of license revocations issued by a magistrate or clerk in connection with implied consent charges.

For a further discussion of this aspect of S.L. 2012-168, see Shea Denning, *2012 Amendments to*

Teenage License Revocation Law, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (July 26, 2012); Shea Denning, *G.S. 20-13.3: Civil License Revocations for Provisional Licensees: Some Questions and Answers* (July 25, 2012).

Department of Public Safety. Effective July 12, 2012, the act amends G.S. 143B-600(a)(6) to establish a Research and Planning Section in the Division of Administration of the Department of Public Safety, with the responsibility for statistics, research, and planning. The amended statute states that the Research and Planning Section is the single state agency responsible for the coordination and implementation of ex-offender reentry initiatives. The act directs the Research and Planning Section to work with local communities to form from three to ten local reentry councils to develop local reentry plans and to form a state-level advisory group with broad representation of agency leaders, service providers, and program recipients.

Extension of time for forensic accreditation and certification. The act amends S.L. 2011-19, as amended by S.L. 2011-307, to extend from October 1, 2012, to July 1, 2013, the time for local forensic laboratories to obtain accreditation pursuant to the requirements of G.S. 8-58.20 and G.S. 20-139.1(c2), which govern the admissibility of certain forensic evidence. The act also amends the indicated 2011 legislation to provide that Scientists I, II, and III, forensic science supervisors, and forensic scientist managers (was, forensic science professionals) at the State Crime Laboratory must obtain certification, if certification is available, within 18 months of the date the scientist becomes eligible to seek certification, by January 1, 2013 (was, June 1, 2012), or as soon as practicable after that date (this language is new).

30. S.L. 2012-170 (H 1173): Forfeiture of public assistance benefits for probation violators who avoid arrest. Effective October 1, 2012, this act adds new G.S. 15A-1345(a1) to allow the court to order the suspension of public assistance benefits that are being received by a probationer for whom the court has issued an order for arrest for violation of the conditions of probation but who is absconding or otherwise willfully avoiding arrest. The suspension continues until the probationer surrenders or is otherwise brought under the court's jurisdiction. The subsection states that it does not affect the eligibility for public assistance benefits being received by or for the benefit of a family member of a probation violator.

31. S.L. 2012-172 (H 853): Juvenile procedures. This act makes the following changes to juvenile procedures, effective on the dates indicated.

Intake procedures. The act rewrites G.S. 7B-1803(a), effective July 12, 2012, to delete language providing that procedures for receiving complaints and drawing petitions must be established by administrative order of the chief district court judge in each district.

Local detention facilities. The act rewrites G.S. 153A-221.1, effective July 12, 2012, to make the Chief Deputy Secretary of Juvenile Justice in the Department of Public Safety responsible for state services to county juvenile detention homes. That responsibility previously belonged to the Secretary of Health and Human Services and the Social Services Commission. Effective January 1, 2013, the act amends G.S. 7B-1905(b) to make it unlawful for a county to operate a juvenile detention facility that does not meet the standards and rules adopted by the Department of Public Safety (previously, Department of Health and Human Services). The act also modifies the duty of

the Secretary of Health and Human Services to develop standards for the use of a jail as a holdover facility by requiring that the standards be developed in consultation with the Chief Deputy Secretary of Juvenile Justice in the Department of Public Safety.

Secure custody of undisciplined juvenile. The act rewrites G.S. 7B-1903(b)(7) and (8), which describe when a juvenile who is alleged to be undisciplined may be held in secure custody, to limit the time the juvenile may spend in secure custody to 24 hours, excluding Saturdays, Sundays, and state holidays. Previously, that period could be extended to 72 hours "where circumstances require[d]." The change is effective October 1, 2012.

No contempt for undisciplined juvenile. The act rewrites G.S. 7B-2505, which describes procedures and consequences for finding a juvenile in contempt for violating the terms of protective supervision. Effective October 1, 2012, the section no longer refers to contempt and no longer permits any period of detention as a consequence of violating the terms of protective supervision. Instead, after notice and a hearing and a finding that the juvenile violated those terms, the court may (i) continue or modify the terms of protective supervision, (ii) order any disposition authorized for undisciplined juveniles under G.S. 7B-2503, or (iii) extend the period of protective supervision for up to three months.

32. **S.L. 2012-175 (H 1052): Mechanics liens.** This act modifies several statutes on mechanics liens, including one relevant to criminal law, G.S. 44A-24, which has made it a Class 1 misdemeanor for a contractor or other person receiving payment for an improvement to real property to furnish a false written statement of the sums due or claimed to be due for labor or material furnished at the site of improvements to such property. The changes make the statute applicable to improvements subject to Article 2 or 3 of G.S. Chapter 44A and revise the elements of the offense to clarify that receipt of payment pursuant to a false written statement may be by the person signing the document, a person directing another to sign the document, or a person or entity for whom the document was signed. The revised statute also provides that, in addition to the criminal punishment for a violation of the statute, conduct constituting the offense and causing actual harm to any person by any licensed contractor or qualifying person constitutes deceit and misconduct subject to disciplinary action under G.S. Chapter 87. The changes become effective January 1, 2013, and apply to improvements to real property for which the first permit required to be obtained is obtained on or after that date or, with respect to projects for which no permit is required, to improvements to real property commenced on or after that date.

33. **S.L. 2012-180 (S 133): Jury list procedures.** Effective July 12, 2012, this act makes various changes in the jury list procedures for the purpose of conforming old statutes to current practices and technology. The revised statutes, in G.S. Chapter 9, provide for the clerk of court rather than the register of deeds to maintain the master jury list; eliminate the requirement that each name be written on a separate card; require jury list preparation procedures to be in writing and available for public inspection; allow a one-time random sorting of names from the alphabetized master list, with jury panel pools then selected sequentially from that random list except to the extent otherwise required by G.S. 15A-1214 on criminal cases; and allow the clerk to serve jury summonses by mail or give them to the sheriff to serve personally, by mail, by telephone or by

leaving at the address. With agreement of the clerk and the senior resident superior court judge, the clerk's functions can be given to the trial court administrator. The changes specify that only the alphabetized master list is available for public inspection; that jurors' addresses are confidential and may be disclosed only pursuant to court order; that the record of excuses is to be kept separate from the master list; and that privileged health information is to be kept confidential. G.S. 7A-312 is also amended to exempt jurors from ferry tolls. This act incorporates and supersedes the changes made by S.L. 2012-18, discussed above.

34. **S.L. 2012-182 (S 699): Division of Criminal Information.** Effective July 12, 2012, this act revises several statutes in G.S. Chapter 114 to change the name of the Division of Criminal Statistics to the Division of Criminal Information (still within the North Carolina Department of Justice) and to allow, in amended G.S. 114-10.1, the Division of Criminal Information (was, Attorney General) to adopt rules and regulations regarding its operations and charge fees for setup and access to the Division of Criminal Information Network.

35. **S.L. 2012-183 (S 738): Required education for bail bondsmen.** Effective October 1, 2012, this act amends G.S. 58-71-71 to require as a condition of becoming and remaining licensed that bail bondsmen and runners obtain their required education hours from the North Carolina Bail Agents' Association.

36. **S.L. 2012-185 (H 1074): Fraudulent receipt of decedent's disability benefit.** Effective for acts committed on or after December 1, 2012, this act revises G.S. 135-18.11, which has made it a Class 1 misdemeanor to fraudulently receive a decedent's retirement allowance, to apply that prohibition to the fraudulent receipt of a decedent's monthly benefit under the Disability Income Plan of North Carolina.

37. **S.L. 2012-188 (H 1021): Justice Reinvestment Act changes.** This act (referred to here as the Clarifications Act) revises the Justice Reinvestment Act (JRA), S.L. 2011-192, as amended by S.L 2011-391 and S.L. 2011-412. The Clarifications Act makes the following changes, some of which took effect immediately upon the act becoming law on July 16, 2012. For a fuller discussion of these changes, see Jamie Markham, *Justice Reinvestment Clarifications Become Law,* N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (July 18, 2012).

"Quick dip" procedures by probation officers. Under the JRA, probation officers may, in certain cases, impose a short term of jail confinement in response to a probation violation. That confinement has been referred to as a "quick dip." Before imposing a quick dip, a probation officer must advise the probationer of his or her right to a lawyer and hearing on the violation. If the probationer signs a written waiver of those rights, the officer can impose the quick dip. As the JRA was originally written, the waiver had to be witnessed by the probation officer and "a supervisor." The Clarifications Act deletes the requirement for a supervisor to act as a witness and allows another officer (designated by the chief of the Community Corrections Section) to do it instead. The change to the witness requirement was made in both G.S. 15A-1343.2(e) (for community cases) and (f) (for intermediate cases), effective July 16, 2012.

Confinement in response to violation for misdemeanors. As originally written, the JRA stated

that the period of confinement in response to a violation (a "CRV," sometimes referred to as a "dunk") for a misdemeanor was "up to 90 days." G.S. 15A-1344(d2). The law also stated that if 90 days or less remained on the defendant's suspended sentence the CRV period had to be for the length of that remaining time. Because most misdemeanor sentences were 90 days or less to begin with, the rule almost always trumped the court's authority to order a shorter CRV period; it was unclear from the language of the original statute whether that was the General Assembly's intent. The Clarifications Act expressly excludes misdemeanors from the 90-days-or-less-remaining rule. In other words, the judge may impose a shorter CRV period in any misdemeanor case, up to the time remaining on the defendant's sentence. The change took effect July 16, 2012, meaning it applies to any CRV-eligible violation heard on or after that date.

Community service fee. The "perform community service" condition added by the JRA as a "community and intermediate" condition of probation under G.S. 15A-1343(a1)(2) did not expressly require payment of the $250 community service fee described in G.S. 143B-708. The Clarifications Act amends the condition to require the fee. The change is effective July 16, 2012, and applies to any community service ordered as a community and intermediate condition on or after that date.

Post-release supervision changes. The Clarifications Act made the following changes to post-release supervision.

First, amended G.S. 15A-1368.3(c) states that when a person is reimprisoned for a violation of post-release supervision, his or her period of supervised release is tolled. (There is not a parallel provision tolling a probationer's period of probation during a CRV period.) The amended law also adds that a supervisee is not to be rereleased onto post-release supervision once the supervisee has served all the time remaining on his or her maximum imposed term. That change applies to all supervisees, including sex offenders, effective for violations on or after July 16, 2012.

Second, the act amends G.S. 143B-720 to allow the Post-Release Supervision and Parole Commission to hold post-release supervision and parole hearings for all supervisees and parolees and contempt hearings for sex offenders by videoconference. The change is effective December 1, 2012.

Third, the act amends G.S. 15A-1368.1 to make clear that the post-release supervision law applies to drug trafficking sentences. The act also adds time to the maximum sentences for drug trafficking in G.S. 90-95(h) to cover defendants' early release onto post-release supervision. The act adds three months to the maximum sentences for Class C, D, and E trafficking (so that maximum sentences in those cases are 120 percent of the minimum plus 12 months) and nine months to the maximum sentences for Class F, G, and H trafficking (so that maximums in those cases are 120 percent of the minimum plus 9 months). The changes are effective for offenses committed on or after December 1, 2012. For a discussion of how to handle drug trafficking sentences for offenses committed between December 1, 2011 and November 30, 2012, see Jamie Markham, *Revised Drug Trafficking Chart,* N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Aug. 1, 2012).

38. S.L. 2012-190 (S 821): Improper taking of menhaden or thread herring. Effective for offenses committed on or after January 1, 2013, this act adds G.S. 113-187(e) to make it a Class A1 misdemeanor to take menhaden or Atlantic thread herring by the use of a purse seine net

deployed by a mother ship and one or more runner boats in coastal fishing waters.

39. S.L. 2012-191 (H 1023): Expunction of nonviolent offenses. Effective for petitions filed on or after December 1, 2012, this act creates a new type of expunction, repeals a type of expunction that is effectively covered by the new expunction procedure, and revises two existing types of expunctions.

New G.S. 15A-145.5 authorizes expunction of "nonviolent" misdemeanors and felonies, defined by the offenses that are not considered to be "nonviolent." Excluded from the "nonviolent" category are Class A through Class G felonies and Class A1 misdemeanors, offenses that include assault as an essential element, offenses requiring registration as a sex offender, certain drug offenses, and other listed offenses in new G.S. 15A-145.5(a). A person may obtain expunction of multiple nonviolent felony and nonviolent misdemeanor convictions if they are disposed of in the same session of court and none occurred after the person had already been served with criminal process for the commission of a nonviolent felony or nonviolent misdemeanor. To be eligible for an expunction, the person must not have any other misdemeanor or felony convictions other than a traffic violation; must not have previously obtained an expunction under the new statute or under G.S. 15A-145 through G.S. 15A-145.4; and must wait at least fifteen years from completion of the sentence of the conviction to be expunged. The petition for expunction must be served on the district attorney where the case was tried; the district attorney then has 30 days in which to file an objection and must make best efforts before the hearing to contact the victim, if any, to notify the victim of the expunction request. If granted, the expunction restores the person to the status the person occupied before the criminal proceedings, and agencies must reverse any administrative actions taken against the person as a result of the conviction that has been expunged. However, a person must disclose the expunged convictions to the applicable certifying commission if he or she is seeking certification as a law-enforcement officer under G.S. Chapters 17C or 17E. The act revises G.S. 15A-151 and pertinent statutes in G.S. Chapters 17C and 17E to allow disclosure of expunged convictions under the new statute to state and local law enforcement agencies for employment purposes and to the pertinent certifying commissions.

The act repeals G.S. 15A-145(d1), which authorized expunction of misdemeanor larceny convictions after 15 years. Expunctions obtained under that statute before December 1, 2012, remain effective and are not abated.

Amendments to G.S. 15A-145.4, which authorizes expunction of "nonviolent" felonies committed when a person was under age 18, modify the offenses excluded from the definition of "nonviolent" felony. For example, a felony conviction for an offense involving methamphetamine, heroin, or sale, delivery, or possession with intent to sell or deliver cocaine remains excluded from the definition of a "nonviolent" felony that may be expunged, but a prayer for judgment continued for such an offense is subject to expunction if the offense is a Class G, H, or I felony. A person still may obtain an expunction of multiple nonviolent felony convictions disposed of at the same session of court if none of the offenses occurred after the person had already been served with criminal process (was, charged and arrested) for a nonviolent felony.

Last, amended G.S. 15A-146, which authorizes expunction of charges that have been dismissed or for which the person has been found not guilty or not responsible, adds prior expunctions under

G.S. 15A-145.4 and G.S. 15A-145.5 as bars to obtaining an expunction under G.S. 15A-146. The expanded bar does not apply to petitions filed before December 1, 2012.

40. S.L. 2012-193 **(H 153): Forfeiture of public retirement benefits for certain felonies and revised aggravating factor in support of forfeiture.** Statutes governing public employment retirement benefits have provided for forfeiture of benefits on conviction of certain offenses, such as buying and selling one's office, if the person was in an elected position, the person committed the offense while serving in that position, and the offense was directly related to the member's service in that position. *See, e.g.,* G.S. 135-75.1 (judicial officials); G.S. 135-18.10 (teachers and state employees). Effective for offenses committed on or after December 1, 2012, this act adds several new statutes expanding the offenses that trigger forfeiture and making the forfeiture provisions applicable to all employees in the retirement systems covered by those statutes. Thus, new G.S. 135-18.10A prohibits the payment of retirement benefits or allowances, except for return of an employee's own contributions plus interest, to an employee in the Teachers' and State Employees' Retirement System who is convicted of any felony under federal law or the laws of this State if (1) the offense was committed while the employee was in service and (2) the conduct resulting in the conviction was directly related to the employee's office or employment. The new statute states that the direct relationship in (2) applies to felony convictions where the court finds the aggravating factor in new G.S. 15A-1340.16(d)(9), described below, or under other applicable state or federal procedures. The forfeiture applies to employees whose benefits have not vested as of December 1, 2012; for employees whose benefits have vested by then, the employees are not entitled to any creditable service accruing on or after December 1, 2012. The act makes similar changes in G.S. 128.38.4A and G.S. 128.26 (Local Government Employees' Retirement System); G.S. 135-75.1A and G.S. 135-56 (judicial retirement); and G.S. 120-4.33A and G.S. 120-4.12 (General Assembly member retirement). The act also directs The University of North Carolina and North Carolina Community College System, in revised G.S. 135-5.1 and G.S. 135-5.4, to adopt equivalent forfeiture provisions for employees who have elected to participate in the Optional Retirement Program and provides, in revised G.S. 143-166.30 and G.S. 143-166.50, for forfeiture of contributions to the Supplemental Retirement Income Plans for State and Local Law-Enforcement Officers if the officers' benefits are forfeited under the new statutes.

    The act also amends G.S. 15A-1340.16(d)(9), one of the statutory aggravating factors in felony sentencing, to make the factor applicable to a defendant who held public elected or appointed office or public employment at the time of the offense and the offense directly related to the conduct of the office or employment. New G.S. 15A-1340.16(f) states that if the court determines that this aggravating factor has been proven, the court must notify the State Treasurer of the conviction and aggravating factor. The new subsection requires the State to include notice in the indictment that it intends to prove this factor.

41. S.L. 2012-194 **(S 847): Technical corrections, citizen-initiated arrests, designation of senior resident superior court judge, and bar from practice of funeral service for conviction of offense of sexual nature against a minor.** Almost all of this act consists of technical corrections, but there are a few substantive changes in the law. Included in the technical changes are revisions of the

statutory charts on the authorized number of magistrates and assistant district attorneys to reflect the reductions made in recent years.

One substantive change is an amendment to G.S. 7A-38.5 to require the chief district judge and District Attorney to refer any citizen-initiated misdemeanor charge, defined as a warrant issued by a magistrate or other judicial official based on information supplied through oath or affirmation by a private citizen, to the local mediation center unless there is no mediation center available, the case involves domestic violence, or the judge or District Attorney determines that mediation is not appropriate. The mediation center will have 30 days to resolve the matter; otherwise, it goes back on the criminal docket. A District Attorney may elect to have the prosecutorial district opt out of the mediation requirement.

Another substantive change is the method of selecting the senior resident superior court judge. Revised G.S. 7A-41.1 returns to the automatic designation of the judge with the longest continuous time on the superior court bench, with one exception. The exception is the senior resident of any superior court district that consists of a set of districts "wholly contained in one county that is specified in law as the sole proper venue for certain actions." It appears that the one district that meets this test is the Tenth Judicial District, Wake County. For that district, the senior resident is to be designated by and serve at the pleasure of the chief justice.

New G.S. 90-210.25B prohibits the Board of Funeral Service from issuing or renewing a license to engage in funeral services to a person who has been convicted of a sexual offense against a minor as defined in the new statute. The Board must impose an equivalent sanction if a person holding a funeral services license in another jurisdiction has had the license revoked or suspended for other felony convictions or because of conduct related to fitness to practice.

42. **S.L. 2012-200 (S 229): Ginseng, galax, and Venus flytrap.** As part of lengthy amendments to the state's environmental laws, this act amends G.S. 106-202.19, effective for offenses committed on or after October 1, 2012, to prohibit: uprooting, digging, taking, or otherwise disturbing from another person's land ginseng, galax, or Venus flytrap without a written permit from the owner; buying galax and Venus flytrap outside of buying season; and buying more than five pounds of galax or 50 Venus flytrap plants for resale or trade except in accordance with the requirements of the statute. A violation is a Class 2 misdemeanor and subject to the civil penalties provided in the statute.