

2004 Legislation of Interest to Court Officials

Criminal

1. **S.L. 2004-26 (H 1373). Increase punishment for assault on private contractor employed as public transit employee.** Adds G.S. 14-33(c)(7) to make it a Class A1 misdemeanor to assault a public transit operator, whether the operator is a public employee or private contractor employed as a public transit employee, when the operator is discharging or attempting to discharge his or her duties. (Formerly, assault on public transit official was Class A1 misdemeanor but private contractor a Class 2 misdemeanor.) Effective Dec. 1, 2004 for offenses committed on or after that date.
2. **S.L. 2004-72 (H 257). Unauthorized use of CB equipment.** Enacts a new GS 62-328 making it a Class 3 misdemeanor to willfully and knowingly use Citizens Band radio equipment not authorized by the Federal Communications Commission. Unauthorized Citizens Band radio equipment includes the use of power amplifiers or equipment prohibited under applicable federal regulations. Effective Dec. 1, 2004 for offenses committed on or after that date.
3. **S.L. 2004-79 (H 26). Camera defeating license plate covers prohibited.** Amends GS 20-63(g) to provide that an operator of a motor vehicle who willfully covers a license plate by any device designed to prevent or interfere with the taking of a clear photograph by a traffic control system using cameras commits an infraction. Statute does not prevent use of transparent covers. Effective Oct. 1, 2004 for acts committed on or after that date.
4. **S.L. 2004-109 (S 1167). Secretly peeping underneath or through clothing of another.** Amends GS 14-202 to make it a Class 1 misdemeanor to secretly peep underneath or through the clothing being worn by another person, through the use of a mirror or other device, for the purpose of viewing the body of, or the undergarments worn by, that other person without their consent. Effective Dec. 1, 2004 for offenses committed on or after that date.
5. **S.L. 2004-124 (H 1414). Admissibility of forensic evidence.** Adds GS 8-58.20 to provide that laboratory report of forensic analysis, including of defendant's DNA, is admissible without testimony of analyst if report is signed and sworn to by analyst. Effective July 1, 2004.
6. **S.L. 2004-128 (S 577). Jurisdiction of probation revocation hearings when district court takes felony plea/DWI vehicle seizure notice/intimidating witness in criminal case.** Effective July 26, 2004 amends GS 7A-271 to provide that the superior court has exclusive jurisdiction over a probation revocation hearing where district court accepted defendant's plea to a felony, except that district court has jurisdiction to hear these matters with the consent of the State and defendant. Effective Dec. 1, 2004 for offenses committed on or after that date, amends GS 15A-1340.11 to provide that intermediate punishment includes assignment to a drug treatment court program. Effective Oct. 1, 2004 for orders entered on or after that date, amends GS 20-28.4 to provide that when court orders vehicle seized in DWI case to be released to owner, order must include notice to owner that he or she must make payment of outstanding towing and storage costs and retrieve motor vehicle or give notice to DMV requesting a judicial hearing on

the validity of a mechanics' lien within 30 days of order. Effective December 1, 2004 for offenses committed on or after that date, amends GS 14-226 to provide that a defendant in a criminal proceeding who threatens a witness in the defendant's case with the assertion or denial of parental rights is guilty of crime of threatening or intimidating a witness, which is a Class H felony.

7. **S.L. 2004-133 (H 1518). Pay restitution before expunction of record.** Amends GS 15A-145, which allows expunction of records for certain young first offenders, to require any restitution that had been ordered to be fully paid before expunction allowed. Effective Sept. 1, 2004 for petitions for expunctions filed on or after that date.
8. **S.L. 2004-141 (S 1078). Vehicle control signals.** Amends GS 20-158 to change the language used to describe traffic lights from "stoplights" to "traffic control signals." Effective July 1, 2004 (but see item # 12, which also amends one of the same sections and is effective Dec. 1, 2004—the effect of these two amendments after Dec. 1, 2004 is unclear.)
9. **S.L. 2004-148 (H 1345) Motor carrier and certain DMV officers enforce criminal laws.** Adds GS 20-49.1 and -49.2 to authorize officers and inspectors in DMV designated by Comm'r and sworn Motor Carrier Enforcement officers of State Highway Patrol to enforce criminal laws when they have probable cause to believe person has committed criminal act in their presence and at the time the officer is engaged in enforcement of laws within their jurisdiction or when they are asked to provide temporary assistance by the head of a State or local law enforcement agency and the request is within the scope of the agency's subject matter jurisdiction. Effective August 2, 2004.
10. **S.L. 2004-154 (S 52). Open criminal discovery in felony cases.** Rewrites GS 15A-903 to require court, upon motion of defendant, to order State (a) to make available to defendant complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant; file includes all statements by defendant and witnesses, investigating officers' notes, results of any tests or examinations; oral statements must be in written or recorded form; (b) to give notice to defendant of any expert witnesses State reasonably expects to call; requires expert to prepare a report of results of any examination or tests conducted, which must be given to defendant, and requires State to give defendant expert's curriculum vitae, opinion, and the underlying basis for the opinion; and (c) to give defendant, at beginning of jury selection, written list of names of all other witnesses whom state reasonably expects to call except name of witness not subject to disclosure if State certifies in writing and under seal that that may subject witness or others to physical or substantial economic harm or coercion or that there is other particularized compelling reason not to disclose. Provides that State is not required to disclose written materials drafted by prosecuting attorney or his or her legal staff for their own use at trial, including witness examinations, voir dire questions, opening statements and closing arguments, or legal research or records or trial preparation interview notes prepared by prosecuting attorney or legal staff to extent they contain the opinions, theories, strategies, or conclusions of the attorney.

Amends GS 15A-905 to provide that if discovery is provided to defendant, upon motion of the State, court must order defendant (a) to permit State to inspect and copy books, papers or other tangible objects which are within the possession, custody or control of defendant and which defendant intends to introduce in evidence; (b) to permit State to inspect and copy results of reports of physical or mental examinations or tests in

connection with the case that defendant intends to offer into evidence; and (c) to give notice to State of intent to offer at trial a defense of alibi, duress, entrapment, insanity, mental infirmity, diminished capacity, self-defense, accident, automatism, involuntary intoxication, or voluntary intoxication; as to alibi defense, court may order disclosure of identity of alibi witnesses and disclosure of rebuttal witness by State to defendant; for duress, entrapment, insanity, automatism, and involuntary intoxication only notice by defendant must contain specific information as to the nature and extent of the defense; (d) give notice of any expert witnesses defendant reasonably expects to call and furnish same information with respect to witnesses that State must furnish defendant with respect to its witnesses; and (e) give written list of names of all other witnesses at beginning of trial in same manner State is required to give defendant. Amends GS 15A-910, which allows court to impose sanctions for failure to comply with discovery, to provide that before imposing sanctions court must consider the materiality of the subject matter and the totality of the circumstances surrounding an alleged failure to comply. Amends G.S. 15A-501 to require law enforcement officer, after arrest of a defendant, to make available to the State on a timely basis all materials and information acquired in the course of a felony investigation. Effective Oct. 1, 2004 for cases for which the trial date is on or after that date.

11. **S.L. 2004-159 (H 1519) Prevent criminals from profiting from crimes.** Adds new Article 2 to GS Chapter 15B to allow victims of crime to reach any profit from crime for restitution. Requires any person who contracts to pay an offender (defined as person convicted of a felony or that person's legal representative or assignee) profit from a crime (includes profit from sale of crime memorabilia or obtained through the use of unique knowledge obtained during the commission of the crime, for example sale movie rights) or funds of the offender (other than earned income) in an amount of more than \$10,000 to give written notice and a copy of the agreement to the Crime Victims Compensation Comm'n. Also requires sheriff or prison superintendent to notify Comm'n if receives funds for the credit of an inmate offender and the value of the funds exceeds \$10,000. Upon receipt of notice, Comm'n notifies victims of offender's crime, surviving spouse or children of deceased victim of crime, or person who was dependent on deceased victim of crime of the funds. Specifies that victim or other persons listed above have 3 years from the discovery of any profit from crime or funds of an offender to bring a civil action against the offender for damages arising out of crime. Grants Comm'n standing to seek ancillary remedies of attachment, injunction, constructive trust or receivership on behalf of the victim. Also provides that person who fails to notify Comm'n of agreement to pay for profit or to pay funds of over \$10,000 is subject to an assessment up to the amount of the payment and a civil penalty up to the greater of \$1,000 or 10% of the payment. Requires money paid as assessment to be deposited in escrow account and allows money to be used to pay judgment victim gets against offender. Specifies that any action taken by an offender, whether by way of power of attorney, creation of corporate entities or otherwise, to defeat the purpose of Act is void against the public policy of the State. Effective Oct. 1, 2004 and applies to contracts for profit from crime entered into on or after that date or funds of an offender that have accrued on or after that date.
12. **S.L. 2004-172 (H 965). Civil penalties for certain traffic offenses.** Adds GS 20-160.1 to provide that unless conduct is covered under some other law providing greater punishment person who commits offense of failure to yield while approaching or entering an intersection, turning at stop or yield sign, entering a roadway, upon approach of an emergency vehicle, or at highway construction and where there is serious bodily injury but no death shall be fined \$500 and have license suspended for 90 days. Amends GS 20-

158(b) to clarify that person who stops at red light may make a right turn but must yield not only to pedestrians using the intersection but also pedestrians who are moving towards the intersection, who are in reasonably close proximity to the intersection, and who are preparing to cross in front of the traffic that is required to stop at the red light. Makes failure to yield to a pedestrian an infraction punishable by a penalty of not less than \$100 nor more than \$500. Effective Dec. 1, 2004 for violations committed on or after that date.

13. S.L. 2004-178 (S 1054). Increase punishment for methamphetamine offenses.

Amends GS 14-17 to provide that second-degree murder includes distribution of methamphetamine that results in death of user when ingested. Amends GS 15A-1340.16(d) to add as an aggravating factor for sentencing that the offense is the manufacture of methamphetamine and was committed where a person under the age of 18 lives, was present, or was otherwise endangered by exposure to the drug, its ingredients, byproducts or waste. Amends GS 90-95(b) to provide that manufacture of methamphetamine is a Class C felony except the offense of packaging or repackaging methamphetamine or labeling or relabeling the methamphetamine container is a Class H felony. Amends GS 90-95(d1) to make possessing an immediate precursor chemical with the intent to manufacture methamphetamine or to possess or distribute an immediate precursor chemical knowing or having reasonable cause to believe that the immediate precursor chemical will be used to manufacture methamphetamine a Class F felon. Amends GS 90-95(d2) to add the following chemicals to list of immediate precursor chemicals: acetic anhydride, acetone, benzyl chloride, 2-butanone (methyl ethyl ketone); ethyl ether, hydrochloric acid, methyl isobutyl ketone, sulfuric acid, tetrachloroethylene, and toluene. Adds GS 130A-284 to require Commission for Heath Services to adopt decontamination standards for property that has been used for manufacture of methamphetamine and to require owners or other persons in charge of premises to comply with rules. Adds GS 15A-1340.16D to increase minimum term of imprisonment by 24 months for person convicted of manufacture of methamphetamine when law enforcement officer, probation officer, parole officer, emergency medical services employee, or firefighter suffered serious injury while discharging duties and that injury was directly caused by hazard associated with manufacture of methamphetamine. Provides that maximum term is the maximum term that corresponds to the minimum term after it is increased by 24 months. Requires indictment to allege facts supporting increased punishment and requires state to prove at trial. Does not apply if offense is packaging methamphetamine or labeling the methamphetamine container. Adds GS 114-43 to grant immunity from civil or criminal liability for filing reports with law enforcement agency concerning purchase or theft of ingredients used to manufacture methamphetamine, cooperating with law enforcement investigation, or testifying in judicial proceeding concerning manufacture of methamphetamine. Provision requiring decontamination standards effective Jan. 1, 2005 and provision regarding immunity effective Aug. 3, 2004. Remainder of provisions effective Dec. 1, 2004 and apply to offenses committed on or after that date.

14. S.L. 2004-203 (H 281). Omnibus criminal law changes-1. *Indecent liberties with student.* Amends GS 14-202.4 to clarify that the definition of “same school” for purposes of taking indecent liberties with a student means school at which the student is enrolled or is present for a school-sponsored or school-related activity and the school personnel is employed, volunteers or is present for a school-sponsored or school-related activity. *Fortune-telling.* Repeals GS 14-401.5, which made it unlawful to practice fortune-telling, palmistry in certain counties. Effective August 17, 2004.

15. **S.L. 2004-183 (H 817). Purchase of pistol with concealed handgun permit.** Amends GS 14-402 to allow person to purchase a pistol without a permit if the person is a resident of NC and has a valid NC concealed handgun permit. Effective August 10, 2004.
16. **S.L. 2004-193 (H1046). Crime of aggressive driving.** Adds GS 20-141.6 to make it a Class 1 misdemeanor to operate a motor vehicle on a highway or public vehicular area in person speeds in violation of GS 20-141 or -141.1 and drives recklessly. To prove the element of reckless driving (for purpose of satisfying this element, but not for proving violations of GS 20-140, *reckless driving*), state must show that person also committed two of the following offenses: Running red light or stop sign, illegal passing, failure to yield, or following too closely. Conviction is Class 1 misdemeanor and reckless driving is lesser included offense. Convictions carry five driver license points and six points if offense occurs in commercial vehicle. Generally treats convictions in same way as reckless driving convictions for driver license revocation purposes. Effective Dec. 1, 2004 for offenses committed on and after that date.
17. **S.L. 2004-186 (H 1354) Domestic violence changes.** (a) Amends GS 15A-1343 to (1) add to regular conditions of probation (was, special condition) requirement that defendant attend and complete an abuser program if court finds that defendant is responsible for acts of domestic violence and there is a program, approved by the Domestic Violence Commission, reasonably available to the defendant unless court finds would not be in best interests of justice and (2) delete requirement that motion to exempt person from paying supervised probation requirement must be made in writing.
- (b) Requires Dep't of Correction in consultation with the Domestic Violence Comm'n to establish a domestic violence treatment program for offenders in the custody of the Dep't whose record includes a finding by the court that the offender committed acts of domestic violence. Dep't to ensure that inmates complete program before release.
- (c) Requires standards for law enforcement and justice officers (sheriffs and jailers) entry-level employment and for in-service training to include training in response to and investigation of domestic violence cases and training in evidence-based prosecutions and specifies that the training must be available by March 1, 2005.
- (d) Amends GS 15A-1340.16(d), regarding the aggravating factor of taking advantage of a position of trust or confidence to commit a crime, to provide that a domestic relationship is a position of trust or confidence.
- (e) Amends GS 14-32.4 to make it a Class H felony to assault another person and inflict physical injury by strangulation.
- (f) Amends GS 14-33.2 to provide that a person commits the crime of habitual misdemeanor if that person (a) violates G.S. 14-33 (simple assault, assault inflicting serious injury, assault with a deadly weapon, assault on a female, assault on an officer or employee of State or political subdivision, assault on school employee or assault inflicting serious injury or with a deadly weapon on person with whom has a personal relationship and in presence of a minor) and causes physical injury or violates GS 14-34 (assault by pointing a gun) and (b) has two or more prior convictions for either misdemeanor or felony assault, with the earlier of the two prior convictions no more than 15 years before the date of the current violation. Specifies that conviction for habitual misdemeanor cannot be used as prior conviction for any other habitual offense statute.
- (g) When defendant is found guilty of an offense involving assault or communicating a threat if the defendant and victim had a personal relationship the judge must indicate on the form (judgment) that the case involved domestic violence. The clerk shall insure that the official record of the defendant's conviction includes the court's determination. If the judge determines that the defendant and victim have a personal

relationship and the defendant was sentenced to community punishment, the judge may require defendant to be sentenced to house arrest with electronic monitoring even though that is an intermediate punishment.

(h) Requires Sentencing Comm'n to study classification of misdemeanor assault offenses in relation to property offenses and develop a system for classifying misdemeanors on the basis of their severity and make a final report to the General Assembly by the 2006 regular session.

(i) Amends GS 15A-401 to authorize an officer to make a warrantless arrest of a person who has violated a pretrial release order by violating a condition imposed under 15A-534.1 (domestic violence pretrial release conditions).

(j) Amends GS 14-415.1, which prohibits a convicted felon from possessing a firearm, to eliminate the exemption allowing the felon to possess a firearm in his or her home or place of business and to define "firearm" as any weapon, including a starter gun, which is designed to expel a projectile by the action of an explosive or any firearm muffler or firearm silencer.

(k) Amends GS 15A-304 to provide that a judicial official may not refuse to issue a warrant for arrest solely because a prior warrant has been issued for the arrest of another person involved in the same matter (in other words, it prohibits a policy of not issuing cross warrants).

(l) Effective for offenses committed on or after Dec. 1, 2004 unless otherwise noted.

18. **S.L. 2004-197 (H 1356). Substance abuse assessors and increased fees.** Amends GS 122C-142.1 to set out requirements for persons authorized to conduct substance abuse assessments and to increase the fee for a person having an assessment done for the purpose of obtaining a certificate of completion from \$50 to \$100. Increased fee becomes effective Oct. 1, 2004 for assessments administered on or after that date.
19. **S.L. 2004-198 (H 1453). Discharging firearm on educational property is felony.** Amends GS 14-269.2 to make it a Class F felony to willfully discharge a firearm on educational property. Excepts using a firearm for hunting purposes on educational property with written permission of the governing body of the school that controls the educational property. Effective Dec. 1, 2004 for offenses committed on or after that date.
20. **S.L. 2004-191 (S 1218). Child restraint requirement modified.** Amends GS 20-137.1(a1) to require child less than 8 years and less than 80 pounds (was, 5 years and 40 pounds) to be properly secured in appropriate child passenger restraint system. If no seating position equipped with lap and shoulder belt to properly secure weight-appropriate child restraint system is available, child may be restrained by properly fitted lap belt only. Effective Jan. 1, 2005.
21. **S.L. 2004-199 (S 1225). Omnibus criminal law changes-2. Domestic assault.** Amends GS 14-33(d) to provide that violation under that subsection (assault inflicting serious injury on person with whom defendant has personal relationship, in presence of minor) is Class A1 misdemeanor, and to provide that person sentenced to community punishment for violation must be placed on supervised probation. *Speeding limited driving privileges.* Amends GS 20-16.1(d) to provide that applications for limited driving privilege under that section go to a district judge for revocations under that section that are based on out-of-state convictions (now, they go to resident superior court judge). *Seizure of illegal gaming equipment.* Effective Oct. 1, 2004, amends GS 14-298 to authorize seizure of gaming tables, punchboards, slot machines and video games that are

illegally possessed under that section; directs officers seizing such equipment to hold it pending district or superior court order to either dispose of or return equipment to owner. Equipment may not be disposed of without notice and opportunity for interested parties to be heard. (4) *Towing*. Amends GS 20-147.1 to specify that passenger vehicle towing another vehicle may not be operated in left most lane of multi-lane highway unless passing, turning left, or if right lanes are blocked; violation is an infraction punishable under GS 20-176. Unless otherwise specified, effective August 17, 2004.

Civil

1. **S.L. 2004-23 (H 1366). Involuntary commitment custody order valid throughout state.** Amends various sections of the involuntary commitment law to make it clear that a custody order issued by a magistrate or clerk is valid throughout the state and can be served in any county in North Carolina no matter where it was issued. Effective June 25, 2004.
2. **S.L. 2004-110 (H 1430). Family court fees.** Adds new GS 7A-314.1 to establish AOC fee of \$30 per hour for use of services of supervised visitation and exchange center through family court program. Allows AOC to establish mechanism to reduce fees based on economic hardship or status as domestic violence victim. Effective July 17, 2004.
3. **S.L. 2004-113 (H 918). Increase civil service of process fee.** Amends GS 7A-311 to increase sheriff's fee for service of civil process from \$5 to \$15. (Fee goes to county fund.) Provides that 50% of the fees collected must be used by county to ensure the timely service of process within the county. Effective Sep. 1, 2004 for fees assessed or collected on or after that date.
4. **S.L. 2004-128 (S 577). Trial courts' jurisdiction changes/lengthen magistrates' terms.**
 - (a) For actions filed on or after Oct. 1, 2004, amends GS 7A-210 to raise maximum allowable amount in controversy for small claims cases from \$4,000 to \$5,000.
 - (b) For actions filed on or after Oct. 1, 2004, amends GS 50-10 to authorize the clerk of superior court, upon request of the plaintiff, to enter judgment in cases in which the plaintiff's only claim is for absolute divorce or absolute divorce and resumption of former name and defendant has been defaulted for failure to appear, has admitted all allegations in the answer, or has filed a waiver of the right to answer. Does not apply if defendant is an infant or incompetent adult.
 - (c) For offenses committed on or after Dec. 1, 2004, amends GS 14-27.2 and 14-27.3 to provide that person convicted of first or second-degree rape has no rights to custody of or inheritance from child conceived during commission of rape, nor any rights under the adoption or abuse, neglect or dependency statutes. Makes conforming amendments to GS 48-3-603(a), GS 50-13.1, and various provisions in Chapter 7B.
 - (d) Submits amendment to NC Constitution to voters at November 2004 election to provide for initial term of office for magistrates of two years and subsequent terms for four years. If approved, amendment takes effect January 1, 2005. Amends GS 7A-171 to make conforming statutory changes if constitutional amendment passes. Service of partial term filling a vacancy does not count as initial two year term. Provides that changes in statutory terms and methods of nomination apply to appointments that take effect after Jan. 1, 2005.
5. **S.L. 2004-143 (H 1083). Landlord charge for water or sewer service.** Adds GS 42-42.1 and 62-110(g) to provide that in written lease, landlord may charge for the cost of

providing water or sewer service to tenants who occupy the same contiguous premises. The costs must be based on user's metered consumption. Requires landlord to get prior approval for authority to charge for water or sewer service from Utilities Comm'n and allows landlord to charge reasonable administrative fee for providing water or sewer service not to exceed amount authorized by Comm'n. Provides that landlord cannot disconnect or terminate water or sewer services for nonpayment of amount due for that service; failure to pay costs for water or sewer can not be used as basis for termination of a lease; and any payment to landlord must be applied to rent owed first and then to charges for water and sewer. Amends GS 42-42 to require landlord who is providing water or sewer service and who has actual knowledge that water being supplied to tenants exceeds maximum contaminant level to notify tenants that water exceeds maximum contaminant level. Effective Aug. 1, 2004.

6. **S.L. 2004-165 (S 916). Civil no-contact orders for workplace violence.** Adds Art. 23 to GS Chapter 95 allowing an employer to file a district court civil action seeking a no-contact order on behalf of an employee who has suffered unlawful conduct at employer's workplace. Employer must consult with employee before seeking order to determine whether there are safety concerns for the employee in participating in the process. "Unlawful conduct" means attempting to cause bodily injury or intentionally causing bodily injury; willfully and on more than one occasion, following, being in the presence of, or otherwise harassing (knowing conduct, by any method, directed at a specific person that torments, terrorizes or terrifies that person and that serves no legitimate purpose) without legal purpose and with intent to place the employee in reasonable fear for the employee's safety; or willfully threatening by any means to physically injure the employee in a manner and under circumstances that would cause a reasonable person to believe that the threat is likely to be carried out and that actually causes the employee to believe that the threat will be carried out. Complaint must be verified and filed in county where unlawful conduct occurred. Requires summons to be issued directing defendant to answer within 10 days of service.

Temporary order. Allows district court judge during court session or magistrate or district judge designated by chief district court judge when court is not in session to issue temporary no-contact orders ex parte if it clearly appears from the specific facts shown by the complaint that immediate injury, loss, or damage will result to the complainant or employee before the respondent (should be defendant) can be heard in opposition and the plaintiff certifies to the court either (a) the efforts, if any, that have been made to give notice to the defendant and the reasons supporting the claim that notice should not be required or (b) that there is good cause to grant the remedy because the harm that the remedy is intended to prevent would likely occur if the defendant were given any prior notice of the plaintiff's efforts to obtain judicial relief. Otherwise temporary order may be issued after notice to defendant. In issuing a temporary order, the court must find that the employee suffered unlawful conduct committed by the defendant. If the order is granted when district court is not in session, the judge or magistrate must also find that there is an immediate and present danger of harm to the victim and that the requirements for an ex parte order have been met. An ex parte temporary order must include date and hour of issuance; be filed immediately in clerk's office and entered of record; define the injury and state why it is irreparable and why the order was granted without notice; when it expires; and give notice of date of hearing for permanent order. A temporary order is effective for not more than 10 days unless within that time the court extends the order for good cause for up to 10 days or for a longer period of time with consent of the defendant.

Permanent (one-year) order. The court may enter a no-contact order by default if the defendant is served with the complaint and summons and fails to answer or does not

appear at a hearing. If ex parte temporary order granted and motion for permanent order filed, requires motion to be “set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character.” If plaintiff fails to proceed at hearing for permanent order, judge must dissolve temporary no-contact order. Also requires court to expeditiously hear defendant’s motion to dissolve or modify order. Provides that permanent order for no more than one year may be entered by the court upon a finding that the defendant was properly served and either answered and was given notice of the hearing or is in default and that employee has suffered unlawful conduct committed by defendant. However, no permanent order may be issued without notice to the defendant; therefore even if defendant defaulted notice of the hearing at which an order may be issued must be given. A permanent order may be renewed for good cause, upon motion being filed before expiration of current order, provided that requirements for initial order are satisfied but does not require commission of another act of unlawful conduct. Requires extensions to be granted in open court even if uncontested.

Relief. Allows court to order defendant not to visit, assault, molest, or otherwise interfere with employer or employer’s employee at workplace; to cease stalking employee at workplace; to cease harassment of employer or employee at workplace; not to abuse or injure employer, employee or employer’s property at workplace; not to contact employer or employee at workplace. Allows court to order any other relief that is necessary or appropriate.

General provisions. Requires clerk to deliver certified copy of order to sheriff on same day order is issued and requires sheriff to serve order on defendant if defendant was not present in court when order issued. Provides that copy of order to be issued to police department if workplace located within municipality or sheriff in located outside city limits. Also requires any order extending, modifying or revoking a no-contact order to be recorded and served in accordance with provisions in act. Violation of no-contact order is punishable as contempt.

Employment discrimination prohibited. Adds GS 95-270 to prohibit employer from discharging, demoting, denying promotion, or disciplining employee who takes a reasonable amount of time off from work to obtain relief under Ch. 50B or Ch. 50C. (Provisions with regard to discharge for obtaining 50B order are identical to provisions in H 1354, amending GS Ch. 50B.)

Effective Dec. 1, 2004 for actions that give rise to no-contact orders issued under this act on or after that date.

7. **S.L. 2004-203 (H 281). Statute of limitations changes.** Amends GS 1-47 to provide that the 10-year statute of limitations for bringing an action on a judgment runs from the date of its entry instead of rendition. Amends GS 1-52 to make the same change for the 3-year statute of limitations for fees due to a clerk, sheriff or other officer by a judgment. Effective Aug. 17, 2004.
8. **S.L. 2004-194 (H 951). Civil no-contact orders for victims of stalking or sexual assaults.** Adds new GS Chapter 50C to allow victims of stalking and nonconsensual sexual conduct that occurred in NC to seek civil no-contact orders similar to domestic violence protective orders. Specifically provides that act doesn’t apply if relationship between parties would allow victim to seek a domestic violence protective order.

Filing action. Allows victim or adult who resides in NC on behalf of minor child or incompetent adult who is a victim to seek no-contact order by filing a verified complaint for an order in district court or by filing a motion in an existing civil action. Action may be filed in county where unlawful conduct occurred, where the plaintiff resides, or where the defendant resides. Allows victim to omit address from all documents filed with court

if states that disclosure would place victim or member of family or household at risk for further unlawful conduct and to designate alternative address to receive notice of motions or pleadings. Specifies that there are no court costs for filing this action. Summons must be issued to defendant requiring defendant to answer within 10 days after service. Any temporary no-contact order and notice of hearing for a temporary order must be attached to the summons. The summons and complaint must be served by sheriff by personal delivery in accordance with Rule 4 and if can't by due diligence be served in that manner then by publication in accordance with Rule 4(j1).

Ex parte temporary orders. Allows district court judge during court session or magistrate or district judge designated by chief district court judge when court is not in session to issue temporary no-contact orders ex parte if it clearly appears from the specific facts shown by the complaint that immediate injury, loss, or damage will result to the victim before the respondent (should be defendant) can be heard in opposition and the plaintiff certifies to the court either (a) the efforts, if any, that have been made to give notice to the defendant and the reasons supporting the claim that notice should not be required or (b) that there is good cause to grant the remedy because the harm that the remedy is intended to prevent would likely occur if the respondent were given any prior notice of the plaintiff's efforts to obtain judicial relief. Otherwise temporary order may be issued after notice to defendant. Court must find that victim suffered unlawful conduct committed by the defendant in order to issue a temporary order, but physical injury is not required. Also if the order is entered by a judge or magistrate when district court is not in session, the court must also find that there is an immediate and present danger of harm to the victim and that the requirements for an ex parte order have been met. An ex parte temporary order must include date and hour of issuance; be filed immediately in clerk's office and entered of record; define the injury and state why it is irreparable and why the order was granted without notice; when it expires; and give notice of date of hearing for permanent order. A temporary order is effective for not more than 10 days unless within that time the court extends the order for good cause for up to 10 days or for a longer period of time with consent of the defendant.

Permanent (one-year) order. Authorizes entry of no-contact order by default if defendant fails to answer or fails to appear at hearing set by court. If ex parte temporary order granted and motion for permanent order filed, requires motion to be "set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character." If plaintiff fails to proceed at hearing for permanent order, judge must dissolve temporary no-contact order. Also requires court to expeditiously hear defendant's motion to dissolve or modify order. Provides that permanent order for no more than one year may be entered by the court upon a finding that the victim has suffered unlawful conduct (stalking or nonconsensual sexual conduct) by the defendant and that the defendant was properly served and either answered and was given notice of the hearing or is in default. However, no order may be issued without notice to the defendant; therefore, even if defendant defaulted by not answering, notice of the hearing at which a permanent order may be entered must be given to defendant. Permanent order may be renewed for good cause, upon motion being filed before expiration of current order, provided that the requirements for an initial order are satisfied but does not require commission of another act of unlawful conduct. However, extensions may be granted in open court only.

Relief. In a temporary or permanent no-contact order the court may order defendant (1) not to visit, assault, molest, or interfere with the victim; (2) to cease stalking the victim; (3) to cease harassment of the victim; (4) not to abuse or injure the victim; (5) not to contact victim; (6) not to enter or remain present at victim's residence, school, place of employment, or other specified places at times when victim is present. Court may order

any other relief determines is necessary and appropriate.

General provisions. Extends civil no-contact order expiring on a day the court is not open for business to close of next court business day. Requires clerk to deliver a certified copy of a civil no-contact order to the sheriff on same day that order is issued and requires sheriff to serve order on defendant if defendant was not present in court when order issued. Requires clerk to deliver to sheriff any order extending, modifying, or evoking any civil no-contact order and requires sheriff to serve as provided above. Also provides that a copy of any order “shall be issued promptly to and retained by” the police department if the victim lives within a city or by the sheriff in the county in which the victim’s residence is located. A knowing violation of a no-contact order is punishable as contempt. Effective Dec. 1, 2004 for actions that give rise to civil no-contact orders issued under this act on or after that date.

9. **S.L. 2004-186 (H 1354) Domestic violence changes.** (a) Adds new Art. 37B of GS Chapter 7A to provide funds to allow Legal Services to provide legal assistance to domestic violence victims in actions for 50B orders, child custody and visitation issues, and legal services that ensure the safety of the client and the client’s children. Requires State Treasurer to send 95¢ from each civil and criminal General Court of Justice costs to the NC State Bar for the legal services programs. Provides that 20% of the funds are distributed on a fixed equal dollar amount for each county and 80% based on the rate of 50B actions filed in that county. Amends GS 84-4.1 to assess a \$100 fee for the support of the General Court of Justice to an out-of-state attorney who moves to be allowed to appear on behalf of a client in a case in NC. The new fee provisions are effective Oct. 1, 2004 for fees assessed or paid on or after that date or for motions to appear by an out-of-state attorney filed on or after that date.

(b) Directs the NC State Bar, in cooperation with the State Bar Ass’n, to study the issue of providing CLE credit to active attorneys for providing pro bono legal representation, specifically looking at pro bono representation to domestic violence victims, and to require final report to General Assembly by Jan. 15, 2005.

(c) Effective Dec. 1, 2004, amends GS 8-53.1 to provide nurse privilege as well as physician privilege is not ground for excluding evidence of abuse or neglect or other injury to child in a juvenile proceeding.

(d) Effective Oct. 1, 2004 revises court’s authority for awarding temporary child custody in GS Chapter 50B hearings. *Ex parte orders.* In ex parte domestic violence orders, allows relief of temporary child custody if the child is exposed to a substantial risk of emotional injury as well as physical injury or sexual abuse; provides that judge or magistrate who finds that child is exposed to substantial risk of physical or emotional injury and that it is in best interest of child and necessary for child’s safety may order other party to stay away from minor child, or return child to, or not remove child from, physical care of a parent or person in loco parentis. If court finds that it is in best interest of child for other party to have contact with child may issue order authorizing contact designed to protect the safety and well-being of the child and aggrieved party, including listing the specific times and places for exchange of child or requiring supervised visitation. *Regular protective orders.* Upon request of either party at a domestic violence hearing after notice or service of process, judge must consider and may award temporary custody of minor children and establish visitation rights. The court must base its decision on best interest of child with particular consideration to child’s safety and must consider the following in making its determination: (i) whether child exposed to a substantial risk of physical or emotional injury or sexual abuse; (ii) whether child present during acts of domestic violence; (iii) whether weapon used or threatened to be used during act of domestic violence; (iv) whether party caused or attempted to cause serious bodily injury

to aggrieved party or child; (v) whether party placed aggrieved party or child in reasonable fear of imminent serious bodily injury; (vi) whether party caused aggrieved party to engage involuntarily in sexual relations by force, threat or duress; (vii) whether there is a pattern of abuse against an aggrieved party or child; (viii) whether a party has abused or endangered the minor child during visitation; (ix) whether a party has used visitation as an opportunity to abuse or harass the aggrieved party; (x) whether party has improperly concealed or detained the child; and (xi) whether a party has acted in a manner that is not in the best interest of the child. If the court awards custody must also consider whether visitation is in best interest of child and the allows judge to order certain specified restrictions on visitation, order noncustodial parent to complete abuser treatment program as condition of visitation, order one or both parents to abstain from consumption of alcohol or controlled substances during visitation and for 24 hours before exchange of child, require a bond for return and safety of child; appoint a guardian ad litem or attorney for minor child, or impose any other condition to protect the safety and well-being of the child or safety of the aggrieved party. Provides that temporary child custody awarded at hearing after notice must be for a fixed period not to exceed one year, but parties have right to de novo hearing under Chapter 50 custody proceeding and any Chapter 50 custody order supercedes 50B order. Also provides that temporary custody order under Chapter 50B may not be renewed beyond the maximum one-year period. Amends child custody statute (GS 50-13.2) to provide that if court finds that domestic violence has occurred, court must enter order that protect the children and party who were victims of domestic violence in accordance with new provisions of GS 50B-3.

(d) Adds new GS 50B-5.5 and 95-241 to prohibit employer from discharging, demoting, or denying a promotion to an employee who took reasonable time off from work to attempt to obtain relief under Chapter 50B. Effective Oct. 1, 2004 for actions filed on or after that date.

(e) Requires clerk when feasible to provide a private area for complainants to fill out domestic violence forms and make inquiries.

(f) Requests Supreme Court to adopt rules establishing minimum education for district court judges in handling civil and criminal domestic violence cases and to study training for all court personnel in the area of domestic violence.

(g) Effective when it becomes law.

10. **S. L. 2004-199 (S 1225). Omnibus civil changes.** (1) *Filing of subpoenas.* Amends GS IA-1, Rule 5(d) to provide that subpoenas and objections to subpoenas are not to be filed with the court unless the court orders them filed or they are used in the proceeding. (2) *Curative statute, clerk's seal.* Amends GS 47-53.1 to include clerk of court in coverage of that statute (which provides that failure to affix seal to document acknowledged before Jan. 1, 1991 is valid if document is probated and recorded.)

Juvenile

1. **S.L. 2004-155 (H 1665). Juvenile disposition hearing location.** Amends GS 7B-1800 to provide that if a juvenile proceeding is commenced and adjudicated in a district other than the juvenile's residence and the juvenile is in residential treatment or foster care in that district, the dispositional hearing is conducted that district unless the judge enters an order, supported by findings, that transfer would serve the ends of justice or is in best interest of juvenile. Effective Oct. 1, 2004 for hearings on or after that date.
2. **S.L. 2004-128 (S 577). Parental rights of sex offender.** For offenses committed on or after Dec. 1, 2004, amends GS 14-27.2 and 14-27.3 to provide that person convicted of

first or second-degree rape has no rights to custody of or inheritance from child conceived during commission of rape, nor any rights under the adoption or abuse, neglect or dependency statutes. Makes conforming amendments to GS 48-3-603(a), GS 50-13.1, and various provisions in Chapter 7B.

Estates and Special Proceedings

1. **S.L. 2004-139 (S 470). Compensation of trustees and other fiduciaries.** *Trustees.* Repeals current GS 32-50 to –52 and replaces it with new GS 32-53 to –62. Provides that if the terms of the trust do not specify the trustee’s compensation, the trustee is entitled to receive compensation that is reasonable under the circumstances. Allows trustee to pay compensation without court approval (a) if amount of compensation does not exceed 4/10 of 1% of the principal value of the assets of the trust on the last day of the trust accounting year or (b) when compensation exceeds that amount, if written notice of the compensation was given to all beneficiaries and no beneficiary filed a proceeding for review of the compensation with the clerk within 20 days of receiving the notice. The trustee also is entitled to reimbursement out of the assets of the trust for expenses properly incurred in the administration of the trust and is authorized to pay himself or herself those expenses without prior approval by the clerk. Provides that trustee or any beneficiary may initiate a trust proceeding (under GS 36A-22.1 through –26.3) for review of the reasonableness of any compensation or expense reimbursement and for the approval or denial of a payment of compensation or expense reimbursement. Specifies that a beneficiary may bring proceeding even though 20-day period after notice of payment of more than 4/10 of 1% has expired. In reviewing the reasonableness of the compensation, the clerk must consider all of the following factors: (a) degree of difficulty and novelty of tasks required of trustees; (b) the responsibilities and risks involved; (c) amount and character of trust assets; (d) skill, experience, expertise and facilities of the trustee; (e) quality of trustee’s performance; (f) comparable charges for similar services; (g) time devoted to administering trust; (h) time constraints imposed upon trustee in administering trust; (i) nature and costs of services delegated to others by trustee; (j) where more than one trustee is serving, reasonableness of the total fees paid to all trustees; and (k) other factors that the clerk deems to be relevant. If the clerk determines that the trustee has received excessive compensation or expense reimbursement, the clerk may order the trustee to make appropriate refunds. In clerk’s discretion, clerk may allow counsel fees to an attorney serving as trustee in addition to trustee compensation where the attorney renders professional services as an attorney that are different from the services normally performed by a trustee and of a type which would reasonably justify the retention of legal counsel by a trustee who is not licensed to practice law.

Other fiduciaries. Provides that fiduciaries other than trustees, upon written request to clerk, are entitled to reasonable compensation in an amount set by the clerk after taking into consideration factors listed for trustees and to reimbursement for expenses properly incurred in the administration of the fiduciary relationship. Specifies that clerk can authorize counsel fees to attorney-fiduciary in addition to fiduciary compensation on the same grounds as specified above for attorney-trustees. Amends GS 32A-11 to provide that if power of attorney instrument does not specify how much compensation or how compensation is determined, subsequent to principal’s incapacity, attorney-in-fact entitled to compensation as determined by the clerk after considering factors set out above.

Interpreting trust and fiduciary instruments. Provides that trust or fiduciary

instrument that provides compensation in an amount “provided by law” or that references G.S. 32-50 shall be construed to allow compensation under new statute. If instrument states that trustee or fiduciary shall serve without compensation not entitled to receive reasonable compensation as provided by this statute.

Effective Jan. 1, 2005 for payments made to a fiduciary on or after that date, including payments for compensation earned before that date.

2. **S.L. 2004-203 (H 281). Guardianship changes.** Amends GS 35A-1213(b) to remove the restriction that a general guardian or guardian of the estate must be a resident of NC and to require nonresident general guardian or guardian of the estate to post a bond. Amends GS 35A-1290(c) to allow clerk to take action other than removal when appropriate when guardian has done certain acts listed in statute. Amends GS 35A-1291 to provide that the clerk may remove a guardian without a hearing if the clerk finds reasonable cause to believe that an emergency exists that threatens the physical well-being of the ward or constitutes a risk of substantial injury to the ward’s estate. Effective August 17, 2004.

Miscellaneous

1. **S.L. 2004-124 (H 1414). Appropriations act.** The budget provisions pertaining to the court system include the following:

Judges

- Adds 2 resident superior court judges, one in District 3B and one in District 15B. District 3B appointee to run for election in 2006 to serve remainder of term expiring Dec. 31, 2010. District 15B appointee to run for election in 2006 for eight-year term beginning Jan. 1, 2007.
- Adds 1 special superior court judge, effective Dec. 1, 2004.
- Adds 4 new district court judges, one in each of the following districts: 5; 17B; 21, 29. Terms begin Dec. 15, 2004. Appointees in Districts 5, 21, 29 to run in 2006 election for four-year term. Dist. 17B seat elected in 2004 general election.

Clerks

- Adds 40 deputy clerks beginning Oct. 1, 2004. Specifies that one use of the new clerks must be to comply with a mandate that all data related to financial aspects of probation cases (number on supervised probation, number on unsupervised, amount of fines, costs, etc. ordered and collected, etc.) be entered into Financial Management System; continues study of uncollected amounts ordered to be paid on probation.

District Attorneys

- Adds 15 assistant district attorneys, one in each of the following districts: 1, 2, 7, 9, 10, 13, 16B, 18, 25, 27B, 28, 30 and adds 3 in District 26. Effective Dec. 1, 2004.
- Provides for an investigatorial assistant in District 16A, effective Jan. 1, 2005.
- Adds 2 legal assistants in District 4.

Public Defenders/Indigent Defense

- Establishes public defender’s office in 1st District, effective July 1, 2004 and 10th District, effective July 1, 2005.
- Authorizes IDS to create 12 new attorney positions and 6 support staff positions for expansion of existing public defender offices.
- Authorizes IDS to create Office of Juvenile Defender, with one attorney and one staff member.
- Appropriates \$8.5 million to pay off backlog of payments due to attorneys and appropriates \$2.5 to help keep current for 2004-05.

Magistrates

- Authorizes a new magistrate for Davie and Macon Counties.
- Requires AOC to evaluate need for magistrates across the state and to reexamine caseload formula it uses to assign priority to need for magistrates and report to general Assembly by March 15, 2005.
- Amends GS 7A-171.1 to provide that magistrate licensed to practice law in any State, not only North Carolina, begins at Step 4 of the salary scale.

Court Reporting

- Adds 2 roving court reporters.

Programs

- Authorizes AOC to use up to \$500,000 in receipts collected from Worthless Check Program to create up to 10 positions in district attorneys' offices that are establishing or expanding worthless check programs.
- Requires AOC to develop plan to continue drug treatment court services through time-limited non-State funding. Provides funding for drug treatment programs in Durham, Mecklenburg and Randolph counties.
- Requires AOC to conduct pilot program in District 27B for SBI lab analysts to provide courtroom testimony by videoconference.
- Requires AOC to conduct pilot mental health courts as component of drug treatment courts in Districts 15B, 26 and 28. Appropriates \$36,000 to AOC to pay for administrative and evaluation costs of operating the pilot mental health courts.
- Provides \$1 million for interpretation services in court proceedings.
- Provides \$50,000 to expand custody mediation into district AOC identifies as top priority.
- Appropriates \$150,000 to create Family Court in an additional district to be determined by AOC from one of the following Districts: 3A, 10, 19B, 21, 23, and 28.
- Orders Joint Legislative Corrections, Crime Control and Juvenile Justice Oversight Committee to study funding formula used for State funding to community mediation centers.

General

- Increases salaries of court officials by the greater of \$1,000 or 2.5 %.
- Requires AOC to study mandatory retirement age for judges and recommend whether policy should be changed and report its findings to General Assembly by Feb. 1, 2005.
- Provides funds for necessary enhancement to Automated Court Information System to track domestic violence offenders and to provide training to judicial officials on domestic violence matters.
- Provides money for digital recording equipment for district court.
- Adds money to increase average compensation for attorneys representing children as guardians ad litem from \$35 to \$45 per hour.
- Creates research analyst position in Sentencing and Policy Advisory Comm'n to produce reports on juvenile recidivism.
- Continues study (jointly with Dep't of Correction) of amounts of money ordered to be paid on probation (supervised and unsupervised) and amounts collected.

2. **S.L. 2004-161 (S 1152). Studies.** Authorizes following studies that may have an impact on the court system:

- Authorizes Legislative Research Comm'n to study towing laws and lienholder notification when vehicles are abandoned or seized; sentencing guidelines; judicial approval for pleas in certain cases; reclassifying statutory rape; habitual felon law;

restructuring prior criminal record points; sentence lengths; adjusting penalties to B1 to E offenses; arson offenses; drug trafficking laws; giving notice of rights to contest mechanic's lien storage charges under DWI seizures; youthful offenders, and street gang terrorism prevention.

- Requires AOC and Dep't of Correction to jointly study processes for collection of restitution and determine methods for reducing number of restitution payments that go unclaimed.
- Authorizes Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee to study State's current system of structured sentencing and compare it with federal system.
- Requires NC Sentencing and Policy Advisory Comm'n to study structured sentencing law in light of *Blakely v. Washington*.
- Creates Legislative Comm'n on State Guardianship Laws to study guardianship laws and relationship to powers of attorney, right to death and other laws. Comm'n to study whether guardianship should be remedy of last resort used only if less restrictive alternatives are insufficient; definition of incompetency; whether court should be required to make express findings with regard to extent of person's incapacity; legal rights lost or retained by virtue of adjudication; proper role of attorneys and guardians ad litem; legal procedures in guardianship proceedings; powers, duties, and liabilities of guardians; and enactment of Uniform Guardianship and Protective Proceedings Act. Comm'n is comprised of 16 members—4 members of House; 4 members of Senate; Director of AOC; Director of Division of Aging; county director of social services and physician who specializes in geriatrics app'ted by President Pro Tempore of Senate; clerk of superior court, attorney with experience in guardianships, and local director for mental health, developmental disabilities, and substance abuse app'ted by Speaker of House; and representative of Governor's Advocacy Council for Persons with Disabilities. Also provides that the following organizations may each designate a member who are ex officio non-voting members: NC Bar Ass'n, the Arc of NC, NC Guardianship Ass'n, Alzheimer's Ass'n-Western Chapter, Alzheimer's Ass'n-Eastern Chapter, Carolina Legal Assistance, The Area Agencies on Aging, County Departments of Aging, and Friends of Residents in Long Term Care. Comm'n to make final report by convening of 2006 session.
- Creates a House Select Study Committee on Video Gaming Machines (11 House members and 4 public members) and directs it to study, among other things, the regulation of those machines, problems associated with them, and the potential impact on the casino operations of the Eastern Band of Cherokee Indians if the machines were banned.