

## 2006 Legislation Affecting Criminal Law and Procedure

Below is a list and brief summary of legislation affecting criminal law and procedure that was enacted during the 2006 legislative session. Be careful to note the effective date of each piece of legislation so it is not implemented before it becomes effective. You may read and print a copy of a new law by clicking on <http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl>, inserting the bill number (not the session law number), for example "s577" (no space between s and 577) in the blank box, clicking "Lookup," and then clicking on the SL number link in the box located on the left center of your computer screen.

1. Session Law 2006-6 (Senate Bill 912). Phases out the possession or operation of video gaming machines by limiting the number of machines that may be possessed or operated to two per location on October 1, 2006, to one per location on March 1, 2007, and prohibits possession or operation of the machines beginning on July 1, 2007, except under a tribal-state compact. Effective for offenses committed on or after July 1, 2007, amends G.S. 14-309 to increase punishment for a second offense from a Class I felony to a Class H felony and the punishment for a third or subsequent offense from a Class H to a Class G felony. See also amendments to this session law in Sections 6 [exemption for machines under G.S. 14-306(b)(1)] and 33 (technical change), Session Law 2006-259 (Senate Bill 1523).
2. Session Law 2006-39 (House Bill 126). Effective June 30, 2006. Amends provisions [G.S. 14-404(a)(1) and G.S. 14-415.13(b)] of pistol permit law and concealed handgun permit law to require a sheriff to conduct a check through the National Instant Criminal Background Check System (NICS).
3. Session Law 2006-66 (Senate Bill 1741). Modifies Appropriations Act of 2005.
4. Session Law 2006-105 (Senate Bill 615). Effective July 13, 2006, section 2.2 of the session law amends G.S. 20-45(d) to provide that a law enforcement officer who seizes a registration plate under the section must report the seizure to the Division of Motor Vehicles within 48 hours of the seizure and must return the registration plate, but not a fictitious plate, to the Division within 10 business days of the seizure. (Author's note: The amendment adds the wording after "48 hours of the seizure.")
5. Session Law 2006-107 (Senate Bill 1378). Effective July 13, 2006, and applicable to property passing from decedents dying on or after that date. Amends G.S. 31A-3 to modify the definition of "slayer" involving the forfeiture of property rights by slayers.
6. Session Law 2006-113 (House Bill 2098), as amended by Sec. 37, Session Law 2006-259 (Senate Bill 1523). Effective for offenses committed on or after December 1, 2006, amends G.S. 14-362.2 (dog fighting and baiting) to include within the statute's prohibitions the fighting of a dog with another dog or with another animal. Effective for actions commenced on or after December 1, 2006, makes changes to G.S. 19A-3 (preliminary injunction; care of animal pending hearing), 19A-4 (permanent injunctions), and 19A-70 (care of animal subject to illegal treatment).
7. Session Law 2006-140 (Senate Bill 774). Amends G.S. 20-135.2A to require rear seat occupants of a vehicle to wear seat belts. A violation is an infraction with a penalty of \$10.00

and no court costs. Provides that the failure of a rear seat occupant to wear a seat belt shall not be a justification for the stop of a vehicle. The session law becomes effective December 1, 2006, and applies to offenses committed on or after that date. However, it requires law enforcement officers to issue only warning tickets for rear seat violations from December 1, 2006, to June 30, 2007.

8. Session Law 2006-160 (House Bill 2880). Amends G.S. 20-217(e) to prohibit a PJC (prayer for judgment continued) for a defendant who violates G.S. 20-217(a) (passing stopped school bus). Effective for offenses committed on or after September 1, 2006.
9. Session Law 2006-169 (Senate Bill 1833). Amends G.S. 14-288.4 to include within “disorderly conduct” impeding, disrupting, disturbing, or interfering with the orderly administration of a funeral, memorial service, or family processional to a funeral or memorial service. A violation is a Class 2 misdemeanor for a first offense, a Class 1 misdemeanor for a second offense, and a Class I felony for a third or subsequent offense. Effective for offenses committed on or after December 1, 2006.
10. Session Law 2006-173 (House Bill 1248). Amends various provisions of public records law (Chapter 132 of the General Statutes) concerning the confidentiality of identifying information as defined in G.S. 14-113.20(b) (with exceptions to that definition). Various effective dates.
11. Session Law 2006-175 (House Bill 1327). Allows Department of Justice to conduct criminal history record checks from state and national repositories of criminal history of applicants for licensure as psychologist. Effective August 1, 2006.
12. Session Law 2006-177 (Senate Bill 1289). Adds new G.S. 20-137.3 to prohibit a person under 18 years old from operating a motor vehicle on a highway or public vehicular area while using a mobile telephone or additional technology associated with the mobile telephone (terms are defined in act) while the vehicle is in motion. Provides limited exceptions and makes other changes. Violation is an infraction punishable by a \$25.00 penalty. Effective for offenses committed on or after December 1, 2006.
13. Session Law 2006-179 (Senate Bill 488). Amends G.S. 14-32.1(f) to increase the punishment for simple assault or battery on a handicapped person from a Class 1 misdemeanor to a Class A1 misdemeanor. Effective for offenses committed on or after December 1, 2006.
14. Session Law 2006-181 (House Bill 1120). Effective August 1, 2006, adds new G.S. 153A-212.2 and 160-289.2 to authorize counties and cities to establish neighborhood crime watch programs. Effective December 1, 2006, adds new G.S. 14-226.2 to make it a Class 1 misdemeanor to threaten or intimidate a person because of his or her participation in a neighborhood crime watch program.
15. Session Law 2006-183 (House Bill 2060). Makes several changes to Crime Victim’s Compensation Act, including an amendment to G.S. 15B-2(1) that increases “allowable expense” from \$3,500 to \$5,000. Effective for claims filed on or after July 1, 2006.
16. Session Law 2006-184 (House Bill 1323). Establishes North Carolina Innocence Inquiry Commission to conduct inquiries into claims of factual innocence on behalf of a living person convicted of a felony. The Commission will consist of eight voting members appointed as set out in the law. Members will include a superior court judge; prosecuting attorney; victim

advocate; criminal defense lawyer; non-attorney public member; sheriff; and two members appointed in the discretion of the Chief Justice of the North Carolina Supreme Court. Sets out procedure for handling claims of innocence. To determine that there is sufficient evidence to merit judicial review requires an affirmative vote of at least five of the eight members of the Commission if the person was convicted other than on a plea of guilty. Requires affirmative vote of all eight members if the person was convicted on a plea of guilty. If sufficient evidence is found to merit judicial review, the Chief Justice must appoint a three-judge panel who will conduct an evidentiary hearing in the superior court of the original jurisdiction in which the person was convicted. If the panel unanimously rules that the convicted person has proved by clear and convincing evidence that he or she is innocent of the charge(s), the panel must dismiss the charge(s). If the panel is not unanimous, the panel must deny relief. Decisions of the Commission and the three-judge panel are final and are not subject to further review. The initial members of the Commission must be appointed by October 1, 2006. No claims of actual innocence may be filed with the Commission until November 1, 2006. No claims of actual innocence may be filed with the Commission until November 1, 2008, if the person's conviction was the result of a guilty plea. The law applies to claims of factual innocence filed on or before December 31, 2010.

17. Session Law 2006-185 (Senate Bill 948). Makes many changes to Article 1 (Boating Safety Act) and Article 4 (Vessel Titling Act) of Chapter 75A of General Statutes. Two changes are: Amends G.S. 75A-10(b1) to make impaired boating offense applicable to any vessel (currently, applies only to motorboat or motor vessel). Adds new G.S. 75A-10(e) to make willful violation of G.S. 75A-10(d) (depositing medical waste in waters of state or inland lake waters of state) a Class F felony if it creates a substantial risk of physical injury to any person who is not a participant in the offense. Effective for offenses committed on or after January 1, 2007.
18. Session Law 2006-186 (Senate Bill 686). Effective August 3, 2006, amends G.S. 90-113.53(a) to prohibit delivery to any one person or a person to purchase at retail more than two packages containing a combined total of more than 3.6 grams (prior law, 6 grams) of any pseudoephedrine products per calendar day. Makes other changes.
19. Session Law 2006-187 (House Bill 1848). Makes many changes affecting the courts. Among them are: Effective August 3, 2006, authorizes Administrative Office of the Courts (AOC) to enter into contracts with private vendors to provide for payment of fines, fees, and costs due to the court by credit, charge, or debit cards.

Applicable to all matters filed with courts on or after date the North Carolina Supreme Court adopts rules for electronic filing, adds new G.S. 7A-49.5 to allow the AOC to contract with vendor to provide for electronic filing of pleadings and other documents in the court system, provided the costs for the hardware and software are not paid using state funds.

Effective October 1, 2006, authorizes Department of Justice to conduct criminal record checks for the Judicial Department.

Effective August 3, 2006, rewrites G.S. 7A-314(f) to provide that in any case in which the Judicial Department is bearing the costs of representation for a party and that party or a witness for that party does not speak or understand the English language, and the court appoints a foreign language interpreter to assist that party or witness, the reasonable fee for the interpreter's services is payable from funds appropriated to the AOC. The appointment and payment shall be made in accordance with new G.S. 7A-343(9b), which requires the AOC Director to prescribe policies and procedures for the appointment and payment of foreign language interpreters, and allows conversion of interpreter positions to permanent state positions under specified circumstances.

Effective January 1, 2007, authorizes Judicial Standards Commission to issue a private letter of caution or public reprimand to a judge or justice when it determines that the misconduct does not warrant a recommendation of censure, suspension, or removal. Adds period of suspension as a recommendation that may be made by the Commission to North Carolina Supreme Court and as a sanction for misconduct that may be imposed by the Supreme Court. Adds provision that, on recommendation of the Commission, the Supreme Court may suspend a judge for period of time for temporary physical or mental incapacity interfering with duties and remove a judge for such incapacity that is, or is likely to become, permanent.

20. Session Law 2006-188 (Senate Bill 846). Amends G.S. 58-71-140 to require the Administrative Office of Courts to establish, on or before October 1, 2006, a statewide Electronic Bondsmen Registry for all licenses, powers of appointment, and powers of attorney requiring registration under the statute.
21. Session Law 2006-205 (Senate Bill 1216). Makes clarifying amendments to G.S. 7B-302(a) and 7B-3100(a) concerning sharing of confidential information concerning child abuse, neglect, and dependency. Effective August 8, 2006.
22. Session Law 2006-213 (Senate Bill 881). Amends G.S. 20-311 to revise the penalties that may be imposed by the Division of Motor Vehicles when there is a lapse in motor vehicle insurance coverage. Makes other changes. Effective for lapses in insurance occurring on or after July 1, 2008 (note that the year of the effective date is 2008).
23. Session Law 2006-227 (House Bill 1025). Make various changes to alcohol beverage control laws, mostly concerning wine. Various effective dates.
24. Session Law 2006-247 (House Bill 1896). Makes various changes to sex offender registration laws and other criminal laws and procedure. (This summary was prepared by Institute of Government faculty member James C. Drennan.)

**a. Registration changes:**

- i.** Amends G.S. 14-208.6(5) to include offenses under G.S. 14-27.7A(a) (sexual relations between 13, 14, and 15 year olds and a defendant at least six years older) as sexually violent offense for registration purposes.
- ii.** Amends G.S. 14-208.6A and -208.6B to require registrants to appear in person to verify their status and amends G.S. 14-208.9A to require personal verification of information every six months instead of every year; also allows sheriff to require new photograph at any time that sheriff thinks previous photo is not true and accurate likeness. Failure to register in person is Class F felony; failure to appear as ordered for new photo is Class 1 misdemeanor.
- iii.** Amends G.S. 14-208.12A to eliminate automatic termination for Sex Offender Registration Program after ten years in the registry; allows registrant to petition court for termination of registry requirement after ten years, and if registrant demonstrates that he or she has not be arrested for any crime that would require registration and is not a current or potential safety threat, the court may terminate the requirement. District attorney must be

given three weeks notice. Registrant who is denied relief may petition annually for review of his or her status. Effective December 1, 2006 and applies to anyone whose registration requirement would otherwise terminate on and after that date.

- iv. Adds new G.S. 14-208A to require notification when person required to register works in another county on temporary basis and establishes temporary residence in another county; applies when person spends more than 10 business days within a 30-day period or aggregate period exceeding 30 days in a calendar year in the temporary county. This section is effective June 1, 2007.
- v. Amends G.S. 14-208.9 to require notice when person intends to move to another state to be provided to sheriff in county from which registrant intends to move. Violation is a Class F felony. Requires similar notice if person changes his or her mind. Failure to provide notice of change of mind is a Class F felony.
- vi. Adds new G.S. 14-208.11A to make it a Class H felony to withhold information or fail to notify law enforcement about a person's noncompliance with Article 27A (sex offender registration program) of G.S. Chapter 14 with the intent to assist the person in eluding arrest, or to harbor or conceal the person, or to provide false information to a law enforcement agency. Does not apply if registrant is in custody.
- vii. Amends G.S. 14-208.6(4)(b) to include in definition of "reportable conviction" any offense committed in another state that requires registration in that state.
- viii. Changes to reporting requirements are generally effective December 1, 2006, for offenses committed on and after that date, unless otherwise noted.

**b. Residence restrictions for registrants**

- i. Adds new G.S. 14-208.16 to make it a Class G felony for a registrant under any registry in Article 27A of G.S. Chapter 14 to knowingly reside within 1,000 feet of the property line for any school (public or private) or child care center. Excludes home schools, institutions of higher education and child care facilities not included in definition in G.S. 110-86(3) (child care center is defined there as an arrangement where three or more preschool or nine or more school age children receive child care). Excludes child care centers on higher education campuses if registrant is student or worker there. Changes in ownership or use of property that occur after person establishes residency may not be used to establish violation. Defines residence as being established when person buys or leases property or resides with an immediate family member who had established residence. Specifies that law does not apply to person who establishes residence before December 1, 2006. [Author's note: For a case on the constitutionality of an Arkansas statute restricting registered sex offenders from living within 2,000 feet of a school or daycare center, see *Weems v. Little Rock Police Department*, 453 F.3d 1010 (8th Cir. 2006).]

- ii. Adds new G.S. 14-208.17 to make it a Class F felony for person required to register under Article 27A to work or volunteer at a location where a child is present and whose activities would include contact with a minor, and also prohibits a person from conducting an activity at his or her residence that involves accepting a minor into his or her care if the person knows that another resident of the same location is required to register. Effective December 1, 2006, for offenses committed on or after that date.

**c. Satellite monitoring**

- i. Adds new Part 5 (G.S. 14-208.33 through 208.38) to Article 27A to require satellite-based continuous monitoring of some registrants.
- ii. Those subject to the requirement are those classified as sexually violent predators, recidivists, or those convicted of aggravated offenses, as those terms are described in G.S. 14-208.6, and any other registrant who is convicted of an offense involving the abuse of a minor and is determined by the Department of Correction to require monitoring as a supervision tool. For the first three categories, the supervision is for life, unless the Post-Release Supervision and Parole Commission terminates the requirement, following a procedure established in the law. For others, the period is determined by the court that ordered the requirement as a condition of probation.
- iii. Directs the Department to use an “active” (sending frequent or continuous information to authorities) monitoring program unless that is not feasible.
- iv. Failing to enroll as ordered is a Class F felony and tampering with a monitoring device is a Class E felony.
- v. One-time \$90 fee to enroll. The fee is to be payable to clerk of superior court, with funds collected to be remitted to the Department of Correction to offset the costs of the time-correlated tracking of the geographic location of subjects.
- vi. Requires court sentencing person who is subject to lifetime tracking requirement to include order requiring person to enroll in monitoring program and be on unsupervised probation for life.
- vii. Amends G.S. 15A-1344 to require judge, when extending probation based on a violation of a probation condition, to require satellite monitoring if the person is otherwise subject to the requirement to be so monitored.
- viii. Effective August 16, 2006, and applies to offenses committed on and after that date, but requirement to enroll in satellite monitoring program is not effective until Jan. 1, 2007. Effective to specified others as provided in Section 15(1) of law.

**d. Notification to sex offenders; driver’s license changes**

- i. Adds G.S. 20-9.3 to require Division of Motor Vehicles to provide notice to every person applying for driver’s license or similar documents of the

requirement for sex offenders to register.

- ii. Adds new G.S. 20-9(i) to prohibit DMV from issuing license to person required to register unless person proves they have in fact registered. If record check does not indicate person should register, then person has to file affidavit indicating they do not have to register. If DMV cannot access National Sex Offender Public Registry, requires separate affidavit and requires DMV to search as soon as it can, and if it reveals person has to register, it must revoke the license issued and notify sheriff in person's county of residence. Allows person denied license to obtain judicial review of the DMV's decision in superior court. Judge is to "take testimony and examine into the facts of the case and determine whether" the person is entitled to a license.
- iii. Amends G.S. 20-37.7 to impose similar requirement for issuance of special identification cards by DMV.
- iv. Effective December 1, 2006 and applies to applications to DMV submitted on or after that date.

**e. Human trafficking**

Adds new Article 10A to G.S. Chapter 14, and repeals G.S. 14-43.2 (involuntary servitude), but with a savings clause to allow prosecutions of offenses occurring before repeal.

- i. Adds new G.S. 14-43.5 (Human trafficking) to make it a Class F felony (adult victim) or Class C felony (minor victim) to knowingly recruit, entice, etc. another person with the intent that the person be held in involuntary or sexual servitude. Evidence of failure to deliver benefits or perform promised services is not sufficient to support a conviction.
- ii. Adds new G.S. 14-43.6 (Involuntary servitude) and G.S. 14-43.7 (Sexual servitude) to make it a Class F felony (adult victim) or Class C felony (minor victim) to subject or maintain a person in servitude. Evidence of failure to deliver benefits or perform promised services is not sufficient to support a conviction.
- iii. Amends kidnapping statute, G.S. 14-39, to include new definition of servitude among purposes of restraint covered by that statute and amends Sex Offender Registration statutes to include sexual servitude among those offenses defined as sexually violent offenses.
- iv. Effective December 1, 2006, for offenses committed on and after that date.

**f. Miscellaneous changes**

- i. Amends definition of "sexual contact" applicable to sexual battery (G.S. 14-27.5A) to include placing by any means semen, urine, or feces on any part of another person. Effective December 1, 2006, for offenses committed on and after that date.

- ii. Amends G.S. 15A-1341 to require Division of Adult Probation and Parole to conduct name search on registry for every person placed on probation (apparently limited to those placed on supervised probation). Effective August 16, 2006.
- iii. Directs Department of Correction to study and make recommendations on how to more effectively treat incarcerated sex offenders to reduce recidivism.

25. Session Law 2006-259 (Senate Bill 1523). Sec. 4(a) of this session law, effective for offenses committed on or after December 1, 2006, amends G.S. 14-72(b)(2) to make the crime of larceny a Class H felony, without regard to the value of the property taken, if the larceny is committed under G.S. 14-54.1 (breaking or entering building that is place of religious worship).

Sec. 5(a) of this session law, effective October 1, 2006, amends G.S. 14-269(b)(4) to specifically include officers of a company police agency within the exemption from the offense of carrying a concealed weapon.

Sec. 7(a) of this session law, effective August 23, 2006, redefines “antique firearm” in G.S. 14-409.11 and amends G.S. 14-415.1 to allow a convicted felon to possess an antique firearm.

Sec. 11(a) of this session law, effective for offenses committed on or after December 1, 2006, amends G.S. 20-217(g) to provide that a person who willfully violates G.S. 20-217(a) (passing stopped school bus) and strikes any person causing serious bodily injury is guilty of a Class I felony (Author’s note: The amendment inserts “willfully” before “violates” and deletes “willfully” before “strikes” in current law.)

Sec. 24(a) of this session law amends G.S. 128-1.1 to provide, where authorized by federal law, a state or local law enforcement agency may authorize its officers to perform functions of an officer under 8 U.S.C. § 1357(g) (performance of immigration officer functions by state officers and employees) if the agency has a Memorandum of Agreement or Memorandum of Understanding for that purpose with a federal agency. State and local law enforcement officers are authorized to hold any office or position with the applicable federal agency required to perform the functions. Effective January 1, 2006, and validates any actions taken between January 1, 2006, and August 23, 2006.

26. Session Law 2006-264 (Senate Bill 602). Sec. 3(a) of this session law, effective August 27, 2006, amends G.S. 14-309.15(a) to allow a government entity to conduct raffle (Author’s note: This had been allowed by a prior session law, Chapter 219 of 1993 Session Laws, but it had not been codified in G.S. 14-309.15).

Sec. 5 of this session law, effective August 27, 2006, amends G.S. 14-407.1 to provide that sheriffs, not clerks of superior court, issue purchase permits for blank cartridge pistols. Makes clarifying amendments to other criminal laws.