

2008 LEGISLATION OF INTEREST TO COURT OFFICIALS

Joan Brannon & James Drennan
UNC School of Government

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Estates and Special Proceedings

1. **S.L. 2008-87 (H 2390). *Raise ceiling on personal property guardian may sell.*** Amends GS 35A-1251 and -1252 to increase from \$1,500 to \$5,000 the amount of ward's tangible personal property that the guardian may sell without a court order and to allow that amount to be sold in each accounting period rather than being the maximum for the duration of the estate. Effective Oct. 1, 2008.
2. **S.L. 2008-182 (H 2391). *Clerk may recommend whether incompetent loses driver's license.*** Amends GS 20-17.1, which provides that DMV Commissioner may determine whether to revoke the driver's license of a person who has been adjudicated incompetent or involuntarily committed for substance abuse, to provide that the Commissioner shall consider the recommendation of the clerk of court regarding whether a person who has been adjudicated incompetent should be allowed to retain his or her driving privilege. Applies to persons adjudicated incompetent under Chapter 35A on or after Oct. 1, 2008.
3. **S.L. 2008-210 (S 2081). *Clerk to report involuntary commitment, incapable of proceeding, and insanity acquittal to NICS.*** This bill was passed in the aftermath of the Virginia Tech murders. Amends GS 122C-54 to require the clerk of court "in the county where the judicial determination was made" to report any involuntary commitment for mental illness to the National Criminal Background Check System (NICS) so that the information can be accessed in determining whether the person is eligible to purchase or possess a gun. The law applies to both orders for inpatient and outpatient commitment for mental illness, but then specifies that for outpatient commitments, the report is to be made only if the individual is found to be a danger to self or others. Since NC law does not require a finding of dangerousness for outpatient commitment, in practice the law will only apply to inpatient commitment for mental illness. It also requires the clerk in the county where a defendant is found not guilty by reason of insanity or mentally incompetent to proceed in a criminal trial to notify NICS.

Adds GS 122C-54.1 to set out a district court procedure for a person to petition for the removal of the mental commitment bar to purchase or possess a firearm if the person no longer suffers from the condition that resulted in the involuntary commitment. Requires petition to be filed in the county in which the most recent judicial determination of commitment was made or in the county of the petitioner's residence. Requires clerk to schedule hearing using regularly scheduled commitment court time and provide notice of the hearing to the petitioner and the district attorney. Copies of the hearing must be served on the director of the inpatient or outpatient (this may occur if the petitioner now lives in NC but the commitment occurred in another state) treatment facility and the district attorney in the petitioner's current county of residence (if different from the district attorney of the county where the petition is filed). Places burden on petitioner to prove that he or she no longer suffers from the condition that resulted in the commitment

and no longer poses a danger to self or others for purposes of the purchase or possession of a firearm. Requires district attorney to present any evidence to the contrary. Requires district court to find facts and enter order that petitioner does or does not continue to suffer from condition and does or does not pose a danger to self or others. Allows de novo appeal to superior court, and after denial by superior court prohibits filing of another petition for at least one year. If judge grants petition, clerk in that county must forward the order to NICS. Makes conforming amendments to GS 14-404 and -415.12 to provide that persons whose rights to possess a firearm have been restored by court order are not ineligible to receive a permit to purchase a gun or to carry a concealed weapon. Effective December 1, 2008.

4. **S.L. 2008-218 (S 132). *No name change for sex offender.*** Amends GS 101-6 to prohibit registered sex offender from obtaining a name change. Effective December 1, 2008.
5. **S.L. 2008-226 (H 2623). *Home foreclosures of subprime loans.*** Adds GS 45-100 to -106 to reduce home foreclosures because of subprime loans (loan originated after Jan. 1, 2005 but before Dec. 31, 2007 that meets the definition of a rate spread home loan in GS 24-1.1F(a)(7)). Creates State Home Prevention Project to seek solutions to avoid foreclosure.

Pre-foreclosure notice. Requires mortgage servicer of a subprime loan to mail pre-foreclosure notice to borrower at last known address at least 45 days before filing a notice of hearing in a foreclosure proceeding giving borrower information about availability of resources to avoid foreclosure, and requires mortgage servicer to electronically file information about borrower with AOC within 3 days of mailing pre-foreclosure notice to borrower. AOC to develop an internal database of information by October 1 so that State Home Foreclosure Prevention Project, Comm'r of Banks, and clerks can have access to data base. (Data base is not a public record available to others.)

Extend time for filing foreclosure. Allows Commissioner of Banks to extend time for filing foreclosure proceeding on a primary residence for 30 days beyond the date set in the pre-foreclosure notice and to notify borrower and AOC if Comm'r determines that there is a reasonable prospect to avoid foreclosure.

Foreclosure notices to certify pre-foreclosure notice was provided. Amends GS 45-21.16 to provide that in any foreclosure proceeding filed on or after November 15, 2008, the notice of hearing must contain a certification that the pre-foreclosure notice was provided in all material respects and that the periods of time set out in act have expired. Provides that provision of a materially inaccurate statement in the certification is cause for dismissal without prejudice and for payment by the filing party of "costs of borrower in defending the foreclosure proceeding."

Fifth finding in all foreclosures. Requires the clerk to make a fifth finding in all foreclosure hearings, in addition to valid debt, default, right to foreclose and notice. The clerk must find either that the underlying mortgage debt is not a subprime loan or if it is a subprime loan, that the pre-foreclosure notice was provided in all material respects and that the periods of time established under the act have elapsed. Allows clerk or other judicial officer to access AOC database to confirm information provided to borrower.

Effective November 1, 2008 and expires October 31, 2010.

6. **S.L. 2008-228 (H 2463). *Clerk to stop foreclosure upon notice of violation in origination or servicing of loan.*** This bill requires mortgage servicers to be licensed and regulated by the Commissioner of Banks under the same provision as mortgage brokers. Mortgage servicers are persons who directly or indirectly receive any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for

escrow accounts and make the payments of principal and interest and such other payments with respect to the amounts received from the borrower under the terms of the loan. Provides that if Commissioner of Banks has evidence that a material violation of law has occurred in the origination or servicing of a loan then being foreclosed and that the violation would be sufficient to affect the validity or enforceability of the underlying contract or right to foreclose, Commissioner may notify the clerk and the clerk must enter an order suspending the foreclosure proceeding for 60 days from date of notice. Deadlines under the foreclosure statute are tolled during the suspension period. At the end of the 60-day period the trustee may proceed with the hearing by providing written notice of a new hearing date, not less than 10 days before the hearing. If the order of suspension occurs after the clerk has authorized the foreclosure but before the expiration of the 10-day upset bid period, the trustee is not required to hold a new hearing but must advertise and hold the sale as provided in Chapter 45. If the violation is cured before the 60-day period, Commissioner notifies the clerk so that foreclosure proceeding may be resumed. Effective January 1, 2009 for foreclosure proceedings filed on or after that date.

Civil

1. **S.L. 2008-12 (H 724). *No social security number on child support orders.*** Amends GS 50-13.4 to eliminate provision that child support orders contain social security numbers of the parties to the action, but requires information sent by clerk to Child Support Enforcement office to contain those social security numbers. Effective Oct. 1, 2008.
2. **S.L. 2008-36 (H 2287). *Allow use of electronic receipts for service of process by a designated private delivery service.*** Amends various sections of GS 1A-1, Rule 4 to provide that when service is made by designated delivery service and obtaining a delivery receipt, the term “delivery receipt” includes an electronic or facsimile receipt but makes it clear that Rule 4(j) does not authorize the use of electronic mailing for service. Effective for receipts given on or after Oct. 1, 2008.
3. **S.L. 2008-170 (H 1113). *Statutory public duty doctrine for claims under State Tort Claims Act.*** Adds GS 143-299.1A to specify when the public duty doctrine may be raised as an affirmative defense to an action against a State agency. (Does not apply to doctrine as it applies to local governments.) Provides that public duty doctrine defense applies when injury is the result of a law enforcement officer’s alleged negligent failure to protect claimant from others or an act of God or a State employee’s alleged negligent failure to perform a health or safety inspection required by statute. The defense does not apply where there is a special relationship between claimant and employee of the State, when the State has created a special duty owed to the claimant and the claimant relies on that duty, or where the alleged failure to perform a health or safety inspection required by statute was the result of gross negligence. Effective October 1, 2008 for claims filed on or after that date.
4. **S.L. 2008-194 (H 545). *Mediated settlement conference changes.*** Amends GS 7A-38.1, -38.3B, and 38.4A to change sanctions provision for superior court mediated settlement conferences, mediations in matters before the clerk of court, and family law settlement proceeding in district court to add contempt as a possible sanction in addition to the current monetary sanction and to allow sanctions for failure to pay mediator’s fee. For superior court and district court mediations, requires party seeking sanctions to file written motion and serve copy on all parties, and allows court to initiate sanction

proceedings on own motion by entry of a show cause order. (For clerk's mediations, current statute provides procedure for clerk to impose sanctions.) Effective January 1, 2009.

5. **S.L. 2008-219 (S 1924). *Require landlords to install carbon monoxide detectors.*** Amends Residential Rental Agreements Act (GS 42-42 to -44) to require landlords to provide an operable carbon monoxide detector in each rental unit and to replace or repair any detector within 15 days after notification in writing by the tenant. Prohibits tenant from deliberately or negligently damaging detector. Makes it an infraction for landlord to fail to install, repair or replace detector within 30 days of notice from the tenant or a governmental unit and makes it an infraction for the tenant to fail to reimburse the landlord for the cost of repairing or replacing a detector within 30 days after notice when the damage was not caused by the landlord or acts of God. Effective Jan. 1, 2010 for residential rental agreements in effect on or after that date.

Juvenile

1. **S.L. 2008-169 (H 2492). *Release of information about juvenile escapee.*** Amends GS 7B-3102 to require disclosure of information about a juvenile who has been adjudicated delinquent and who escapes from a detention facility, secure custody or a youth development center no matter what class the offense would have been if committed by an adult and to allow disclosure when juvenile who is alleged to have committed an offense that would be a felony if committed by an adult escapes from a detention facility or secure custody while awaiting adjudication. Effective October 1, 2008.

Criminal

1. **SL 2008-2 (S 1480). *Medical release of no-risk inmates.*** Adds new Art. 84B to GS Ch. 15A authorizing release of geriatric, permanently and totally disabled or terminally ill inmates not otherwise eligible for release based on medical opinions after reviews by Dep't of Correction and Parole and Post-Release Supervision Commission. Release may be revoked if person fails to comply with release conditions or if person improves such that he or she would no longer medically qualify for the release. Condition supporting release must not have been present at time of sentencing or must have gotten worse since sentencing. Effective June 10, 2008.
2. **S.L. 2008-4 (H 2189). *Provide information to domestic violence victims.*** Amends GS 15A-831 to require the investigating law enforcement agency to provide victims of domestic violence a copy of the informational sheet developed by the AOC pursuant to GS 50B-3(AOC-CV-323T). Also requires the NC Domestic Violence Comm'n to study the adoption of a statewide automated victim notification system for persons who have received a domestic violence order. Effective July 1, 2008.
3. **S.L. 2008-15 (H 946). *Vandalism over \$5,000 made felony.*** Amends GS 14-144 to increase the penalty for destroying or damaging buildings, fences, walls, gardens, plants etc. to a Class I felony if the damage is more than \$5,000. Effective for offenses committed on or after Dec. 1, 2008.

4. **S.L. 2008-20 (H 2762). *Randolph clerk to accept monitoring fees.*** Local bill authorizes clerk in Randolph to accept fees ordered by court for pretrial electronic monitoring by sheriff, and to pay money to county. Effective June 26, 2008.
5. **S.L. 2008-89 (S 236). *Increase punishment for violating housemoving laws.*** Amends GS 20-371 to increase penalty for violating laws regarding housemoving from Class 3 to Class 1 misdemeanor.
6. **S.L. 2008-91 (H 133). *All-terrain vehicles for beach driving exemptions.*** Amends GS 20-171.22 to provide that requirements to wear eye protection and safety helmets do not apply to persons over 16 lawfully using all-terrain vehicle on ocean beach area. Effective July 11, 2008.
7. **S.L. 2008-93 (H 44). *Increase punishment for repeat violation of domestic violence protective order.*** Amends GS 50B-4.1 to provide that violation of a domestic violence protective order is a Class H felony if defendant has two, instead of three, prior convictions of offenses under Chapter 50B. Effective for offenses committed on or after Dec. 1, 2008, but offenses committed before that date count in determining prior offenses.
8. **S.L. 2008-117 (H 933). *Rape, sex offense changes.*** Adds new crime, rape of a child—GS 14-27.2A, when a person at least 18 engages in vaginal intercourse with child under 13. Creates new sexual offense with similar elements, GS 14-27.4A. Both offenses punishable as Class B1 felony with minimum punishment of 300 months, with lifetime global satellite monitoring upon release from prison. Court may sentence to life without parole if aggravating factors are found to justify the greater sentence. Amends various GPS statutes to reflect new offenses and to require sex offender registration of person convicted of new offenses. Increases punishment class for 1st degree sexual exploitation of minor (from Class D to Class C), for 2nd degree (from Class F to Class E), for 3rd degree (from Class I to Class H), and for promoting prostitution of a minor (from Class D to Class C). Amends GS 14-208.6A to specify that sex offender registration term is 30 years, unless judge terminates the requirement early (after 10 year minimum) pursuant to GS 14-208.12A. Amends various statutes to reduce from 10 to three the number of days person has to report for sex offender registration or to report changes in status thereafter. Adds new GS 14-208.18 to make it a Class H felony for person required to register as sex offender to be on premises of any place intended primarily for use by minors, and within 300 feet of any place within a public place (like a mall) that is intended primarily for use by minors, or at any place where minors gather for educational, social, or recreational programs. Creates narrowly limited exceptions for parent or guardian to attend school functions of a child, for person to vote if voting location is at a school or for person required to register to attend school as a student. Amends GS 115C-391 to allow school board to expel student who is required to register as sex offender, based on clear and convincing evidence of the need to expel the student. Adds GS 14-208.25A to require day care center operators and elementary school principals to register with Sex Offender Registry to receive e-mail notices of people who move within a one-mile radius of the school or day care center. Amends GS 15A-1345(b) to prohibit pretrial release of sex offender on probation for violation of probation unless court finds person is not a danger to public if released on bail. Amends GS 15A-1386.6 to prohibit bail for post-release supervision violations in similar situations. Adds new GS 115C-332.1 to require local school boards to require board to check sex offender registry for any contractual employee who has direct contact with children. Effective December 1, 2008 for offenses

committed on and after that date; 30 year period for registry applies to registrations made on or after that date.

9. **S.L. 2008-120 (S 175). *Interstate Wildlife Violator Compact enacted.*** Adds new Art. 22B to GS Chapter 113 adopting the Interstate Wildlife Compact, which is similar to the Drivers License Compact for motor vehicle offenses. Requires wildlife officer citing out-of-state resident for wildlife offense to treat person as if he or she were a NC resident if violator's residence is in a state that is a member of the Compact and violator shows officer proof of identification. In other words, officer will issue a citation to violator without arrest and without taking person before a magistrate. If violator fails to comply with the citation or is convicted of the charge, NC notifies the violator's home state. If the report indicates a failure to comply, the home state will suspend any hunting and fishing licenses the violator has, and if the report indicates a conviction in NC, the home state will treat it as a conviction in that state. Makes it a Class 1 misdemeanor for a person to hunt or fish in NC or purchase a license to do so when that person's right to hunt or fish has been suspended under the Compact. Effective October 1, 2008.
10. **S.L. 2008-122 (S 180). *Prohibit electronic game promotions.*** Adds GS 14-306.3 to make it unlawful to promote, operate, or conduct a server-based game promotion or to possess any game terminal with a display that simulates a game ordinarily played on a slot machine or video gaming machine for purpose of promoting, operating or conducting a server-based game promotion. Defines "server-based game promotion" as system that has a database containing a pool of entries with each entry associated with a prize value; participants purchase a prepaid card; with each prepaid card, the participant obtains one or more entries; and entries are revealed at a point-of-sale terminal or at a game terminal with a display that simulates a game ordinarily played on a slot machine or video poker machine. Punishment is a Class 1 misdemeanor; second offense is Class H felony; and third or subsequent offense is Class G felony, except possessing 5 or more game terminals is a Class G felony. Amends GS 14-298 to add game terminals to illegal gaming items that may be seized. Effective for offenses committed on or after December 1, 2008.
11. **S.L. 2008-128 (S 944). *Increase penalty for hit and run/larceny change.*** Amends GS 20-166 to increase the penalty from Class H to F felony for failing to stop when involved in a crash that has resulted in serious bodily injury or death and to leave as a Class H felony failure to stop in a crash that resulted in injury. Adds GS 14-83A to provide that removing personal property that is affixed to real property (fixtures) with the intent to steal is larceny, thereby eliminating the common law principle that fixtures are be subject to a charge of larceny. Applies to offenses committed on or after December 1, 2008.
12. **S.L. 2008-129 (H 1003). *Probation violations may be aggravated factor in later sentence or grounds for modifying or extending term of probation.*** Amends GS 15A-1340.16(d) to add as an aggravating factor that defendant, during the 10-year period before the commission of the offense for which defendant is being sentenced, has been found to be in willful violation of conditions of probation, parole, or post-release supervision. Amends GS 15A-1344 to authorize the court to extend, modify or revoke probation after the period of probation if, before the period of probation has expired, the State has filed a violation report indicating the intention to conduct a violation hearing; the court finds the probationer violated conditions of probation; and the court finds for good cause shown and stated that probation should be extended, modified or revoked. If the court finds the statutory grounds for extension and opts to extend the period of

probation, authorizes extension of up to 3 years. Aggravating factor provision applies to offenses committed on or after Dec. 1, 2008 and probation provisions apply to probation hearings on or after that date.

13. **S.L. 2008-133 (H 1624). *Inmates may be considered for parole once every three years.*** For pre-Structured Sentencing prisoners who were convicted of murder, allows the Parole Comm'n to give consideration of parole once every three years instead of every year. Effective for parole reviews conducted on or after October 1, 2008.
14. **S.L. 2008-145 (S 1957). *Expand territorial jurisdiction of General Assembly Special Police.*** Amends GS 120-32.3 to grant General Assembly special police jurisdiction anywhere in State while performing advance work and providing security for the protection of legislative members, staff and the public for a meeting of a committee or commission of the General Assembly or any meeting of a legislative body or organization. Effective August 2, 2008.
15. **S.L. 2008-156 (S 1800). *All-terrain motor vehicles by natural gas companies permitted on highways.*** Adds GS 20-171.25 to permit natural gas utility employees engaged in certain specified activities to operate motorized all-terrain vehicles on highways. Effective August 3, 2008.
16. **S.L. 2008-158 (S 1407). *Resale of tickets.*** Adds new GS 14-344.1 to regulate resale of tickets to events such as sporting or entertainment events; allows resale at greater than face value of admission tickets over the Internet, if resale is done by Web site that has ticket guarantee. Guarantee must provide for repayment if event is cancelled, purchaser is denied admission or ticket is not delivered. Sponsor of event may prevent resale if proper notice is included, as specified in the bill. Adds new GS 14-344.2 to prohibit use of ticket purchasing software that circumvents ticket sellers security software or otherwise allows the purchase of tickets in bulk in ways not intended by the seller. Amends GS 14-344, which generally prohibits resale at greater than face value, to allow resales under new GS 14-344.1. Effective August 1, 2008 and expires on June 30, 2009.
17. **S.L. 2008-160 (H 2570). *Allow moving of trailer frames.*** Amends GS 20-115.1 to allow manufacturer of trailer frames, with a permit, to transport trailer frame to another location within 3 miles on public streets during daylight hours if the width of the frame does not exceed 14 feet. Effective August 3, 2008.
18. **S.L. 2008-167 (H 887). *Stalking offense broadened.*** Repeals GS 14-277.3, stalking crime, and replaces it with new GS 14-277.3A. Defendant is guilty of stalking if willfully on more than one occasion harasses another person without legal purpose or willfully engages in a course of conduct directed at a specific person without legal purpose and the defendant knows or should know that the harassment or course of conduct would cause a reasonable person to (a) fear for his or her safety or the safety of his or her immediate family or close personal associates or (b) suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment. (Previous offense covered harassment and following the person.) Defines "course of conduct" as two or more acts, including acts in which the stalker directly, indirectly or through a third person, by any action, method, device or means, is in the presence of, or follows, monitors, observes, threatens, or communicates to or about a person, or interferes with a person's property. Continues same definition of harassment and same punishment as previous statute. Effective for offenses committed on or after December 1, 2008.

- 19. S.L. 2008-173 (H 2105). *Increase compensation for persons pardoned because of erroneous conviction.*** Amends GS 148-84 to increase compensation for prisoners who receive a pardon of innocence from \$20,000 to \$50,000 per year of imprisonment, with a maximum of \$750,000 and to provide that in addition Industrial Comm'n may award compensation for job skills training or tuition and fees at NC public institution of higher learning for loss of job opportunities. Effective for persons granted pardon of innocence on or after January 1, 2004.
- 20. S.L. 2008-189 (S 1214). *Probation Interstate Compact amendments.*** Amends GS 148-65.6 to increase membership on NC State Council for Interstate Adult Offender Supervision by three members by adding district judge, district attorney, and sheriff. Requires person convicted in NC who requests transfer of supervision to another state to pay \$150 fee to Dep't of Correction Compact Administrator; Administrator may waive fee. Allows Administrator to waive supervision fees for people convicted in other states who are supervised in NC; that fee must be paid to clerk of court, unless waived. Amends GS 148-65.8 to specify that person supervised in NC under the Compact not entitled to bail pending hearing on whether the person should be returned to the state in which the conviction occurred. Requires administrative official conducting the hearing to make a record of the hearing, and allows detention of the offender until notice is received from the state of conviction, if the recommendation is to reincarcerate the offender for the original crime. If that state decides to follow recommendation, detention to continue as long as necessary to arrange for transfer. Effective August 7, 2008.
- 21. S.L. 2008-191 (S 1860). *Child abuse changes.*** Amends GS 14-318.2 to increase the penalty for misdemeanor child abuse from a Class 1 to Class A1 misdemeanor. Amends GS 14-318.4 to add the following felony child abuse offenses: Willful act or grossly negligent omission in the care of child less than 16 by parent or other person providing care that shows a reckless disregard for human life is a Class E felony if the act or omission results in serious bodily injury to the child and is a Class H felony if it results in serious physical injury to the child. Act defines serious bodily injury and serious physical injury. Effective for offenses committed on or after December 1, 2008.
- 22. S.L. 2008-197 (S 685). *Cross burning and other racial intimidation changes.*** Amends GS 14-12.12, which prohibits cross-burning on private property of another or on a public street or highway with intent to intimidate person, to extend location to any public place. Amends GS 14-12.13 and -12.14 to make crimes of placing an exhibit with intention of intimidating a person, to specifically include a "noose" as an exhibit. Increases punishment for intimidation offenses that are currently Class I felonies to Class H felonies. Amends GS 14-3 to increase from Class I to H felony any Class 1 or A1 misdemeanor committed because of the victim's race, color, religion, nationality or country of origin. Effective for offenses committed on or after December 1, 2008.
- 23. S.L. 2008-199 (S 1955). *Release of inmates for deportation.*** Adds GS 148-64.1 to allow the Post-Release Supervision and Parole Commission to conditionally release an inmate who is incarcerated for a nonviolent criminal offense into the custody of U.S. Immigration and Customs Enforcement if Dep't of Correction received a final order of removal of inmate. Defines "nonviolent criminal offense" as an impaired driving offense, felonious breaking or entering, breaking into a motor vehicle, boat etc., possessing stolen goods, obtaining property by false pretenses where the thing of value is less than \$100,000, and felonious possession of a Schedule VI controlled substance. An inmate is

eligible for release only if he or she has served at least half of the minimum sentence or in the case of conviction for an impaired driving offense has met all of the parole eligibility requirements; was not convicted of an impaired driving offense that resulted in death or serious bodily injury; and the inmate agrees not to reenter the United States unlawfully. Provides that Commission's decision to release inmate is discretionary and not appealable. Provides that inmate violates conditions of early release is subject to arrest and revocation of the release. Effective August 8, 2008.

24. S.L. 2008-210 (S 2081). *Clerk to report involuntary commitment, incapable of proceeding, and insanity acquittal to NICS.* This bill was passed in the aftermath of the Virginia Tech murders and is discussed in more detail under the heading of Estates and Special Proceedings above. Amends GS 122C-54 to require the clerk in the county where a defendant is found not guilty by reason of insanity or mentally incompetent to proceed in a criminal trial to notify National Instant Criminal Background Check (NICS). Also requires report of order of involuntary commitment for mental illness and sets out procedure district court hearing for a person to petition for the removal of the mental commitment bar to purchase or possess a firearm if the person no longer suffers from the condition that resulting in the involuntary commitment and is not a danger to self or others. Requires district attorney to present any evidence that would be to the contrary at the hearing. Allows de novo appeal to superior court. Makes conforming amendments to GS 14-404 and -415.12 to provide that person whose rights to possess a firearm have been restored by court order are not ineligible to receive a permit to purchase a gun or to carry a concealed weapon. Effective December 1, 2008.

25. S.L. 2008-214 (H 274). *Gang activity crimes.*

(a) Adds new GS 14-50.15 to -50.30, entitled NC Street Gang Suppression Act, that creates following new felonies:

Class H felonies—(i) Person associated with a criminal street gang conducting or participating in a pattern of criminal street gang activity or acquiring or maintaining an interest in any real or personal property through a pattern of criminal street gang; (ii) causing or encouraging person 16 or over to participate in criminal street gang activity; (iii) communicating a threat of injury to a person or damage to person's property with intent to deter person from assisting another to withdraw from gang membership; (iv) communicating a threat of injury to or a person or damage to person's property in retaliation for person's leaving a gang.

Class F felonies—(i) person associated with a criminal street gang to conduct or participate in pattern of criminal street gang activity as an organizer or position of management of gang;(ii) causing or encouraging person under 16 to participate in criminal street gang activity.

Misdemeanor/Class I felony—Enhances sentence of person 15 or older who is convicted of a misdemeanor offense for the benefit of or in association with criminal street gang activity by one class higher than offense committed. A Class A1 misdemeanor is enhanced to Class I felony

(b) Specifies that new specific gang activity offenses do not apply to juveniles under the age of 16 except for enhanced misdemeanor mentioned above. Requires judge to note on the judgment if determines that conviction for a crime other than the specific gang activity crimes arises out of criminal street gang activity.

(c) Sets out procedure for forfeiture of property used in or derived from street gang activity; and provides that real property used for such activity is a public nuisance.

(d) Allows court to conditionally discharge without a finding of guilt first-time offenders under 18 for Class H gang activity felony or enhanced misdemeanor, and sets

out procedure for expunction of record of first-time offenders under 18 who are convicted of same offenses.

(e) Adds GS 14-34.9 to make it a Class E felony to willfully or wantonly discharge a firearm, as a part of a pattern of criminal street gang activity, from within a building, motor vehicle or other enclosure toward a person not within that enclosure.

(f) Amends GS 15A-533 to create a rebuttable presumption that pretrial release will not assure the appearance of the person and the safety of the community if judicial official finds that defendant has been charged with an offense in association with any criminal street gang while on pretrial release for another offense and defendant has been convicted within the previous 5 years for one of the gang activity crimes set out in act.

(g) Amends GS 15A-1340.16A, which enhances sentence for defendant convicted of certain felonies if defendant used a firearm, to apply to use of any deadly weapon.

(h) Effective December 1, 2008 for offenses committed on or after that date.

26. S.L. 2008-216 (H 2340). *Prohibit children under 16 from riding in open bed of truck.*

Amends GS 20-135.2B, which prohibits children under 12 from riding in the open bed of a motor vehicle, to broaden coverage to children under 16 and to provide that the exception for vehicles being operated in an agricultural enterprise specifically applies to providing transportation to and from the principal place of the agricultural enterprise. Provides that penalty of up to \$25 (was, \$25 penalty) applies no matter how many children are riding in open bed. Effective for offenses committed on or after October 1, 2008.

27. S.L. 2008-218 (S 132). *Pornography amendments.* Amends GS 14-190.13 to include lascivious exhibition of genitalia or pubic area within the definition of sexual activity as that term is used in the child pornography laws. Increases class of offense for sexual exploitation of a minor by one class (from Class D to Class C for 1st degree, Class F to E for 2nd degree, and Class I to H for 3rd degree). Amends GS 14-202.3, solicitation of child by computer, to make it a Class G felony for the person to actually show up at the arranged meeting (otherwise, the act of setting up the meeting is a Class H felony.) Adds GS 14-202.5 to make it a Class I felony for a registered sex offender to access a commercial social networking Web site when the sex offender knows that the site permits minors to become members or to create a web page on the site. Allows access of websites that provides only one service such as photo-sharing, email, instant messages, or chat room platform. Offense is committed in NC if transmission originates in state or is received in state. Commercial social networking sites may be civilly liable unless they make reasonable efforts to prevent sex offenders from accessing the site. Adds new GS 14-202.6 to prohibit registered sex offender from changing name under GS Ch. 101, and amends GS 101-6 to prohibit such name changes. Civil liability for sites effective May 1, 2009, and remainder of bill is effective December 1, 2008 for offenses committed on and after that date.

28. S.L. 2008-220 (S 1736). *Sex offender registry changes.* Adds felony child abuse by parent who permits act of prostitution by child under 16 or allows sexual act upon such child to offenses for which defendant is required to register as a sex offender. Effective for persons convicted of offense on or after December 1, 2008.

Clarifies that current provision that information sex offenders are required to register includes a photograph and fingerprints means a photo and fingerprints taken by the sheriff, without charge, at the time of registration. Requires defendant to register any online identifier that defendant uses or intends to use. Online identifier means electronic mail address, instant message screen name, user ID, chat or other internet name. Requires

defendant to notify sheriff of any change of online identifier and verify whether still uses that identifier in semiannual verification. Allows businesses that provide internet service, online service, electronic mail service or chat services to have access to a list of online identifiers of persons in the sex offender registry, but Division may charge an annual fee of \$100 for access. Provides that entity that receives complaint from a user of the entity's services that a person uses its service to solicit a minor by computer to commit an unlawful sex act or a report that a user may be violating the crimes of sexual exploitation of a minor by posting or transmitting material that contains a visual representation of a minor engaged in sexual activity must report that information and the online identifier information of the person allegedly committing the offense to the Cyber Tip Line at the National Center for Missing and Exploited Children. The National Center must then forward the report to an appropriate law enforcement agency in this State. If entity complies with act, grants immunity from civil or criminal liability for refusing to provide system service to a person because the entity reasonably believed the person was subject to sexual offender registration or for person's criminal or tortuous acts against a minor with whom the person communicated on the entity's system. Effective May 1, 2009, but defendants already registered before May 1, 2009 are not in violation of online identifier provisions if they provide information at first verification of information that occurs on or after May 1, 2009.

Requires AOC, in consultation with Dep't of Justice, Dep't of Correction, and NC Sheriff's Ass'n, to develop a procedure for timely notification to in Dep't of Justice and sheriffs of persons subject to registration who do not receive any active term of imprisonment. Effective July 1, 2008.

Appropriates \$250,000 for 2008-09 to Governor's Crime Comm'n for grants of up to \$25,000 to sheriffs' offices to assist in enforcement of sex offender laws. Effective July 1, 2008.

- 29. S.L. 2008-221 (S 1695). *Vehicle lengths.*** Amends GS 20-115.1 to allow tractor trailers not more than 53 feet long to be driven on any primary highway route in NC if it meets specified requirements and is not prohibited by Dep't of Transportation (formerly maximum length was 48 feet unless specifically allowed by state DOT). Amends GS 20-116(e) to increase maximum width allowed for grain combines and farm equipment allowed on highways from 18 to 25 feet, subject to restrictions specified in that section. Amends GS 20-118(c) (12) to exempt vehicles hauling agricultural products to market from vehicle weight and axle restrictions of that section. Effective Sept. 1, 2008.

Miscellaneous

- 1. S.L. 2008-83 (H 2523). *Study training needs of judicial system in responding to persons with autism.*** Requires School of Government, in consultation with Autism Society of NC, TEACCH, and appropriate legal assn's and organizations, to study various groups in the judicial system for which additional training may be necessary on the legal issues and appropriate responses to persons with autism. School of Government to report to General Assembly by Oct. 1, 2008. Effective July 11, 2008.
- 2. S.L. 2008-107 (H 2436) and -118 (H 2438). *Appropriations.***
 - (a) Appropriates funds for new personnel (in addition to personnel to take effect in 2008-09 that were added in biennial budget adopted in 2007) as follows:
 - (i) 2007 budget (S.L. 2007-323 § 14.14) provided that 28 new Assistant District Attorney (ADA) positions to be created in 2008-09 were to be allocated by the legislature

in 2008. This budget added 3 more positions and allocated the 31 positions as follows: 1 new ADA in Districts 2, 5, 7, 9A.12, 15A, 16A, 17A, 17B, 18, 19B, 19C, 20A, 20B, 21, 25, 27A, 27B, and 28; 2 new ADA's in Districts 11 and 14; 3 in District 10; and 5 in District 26.

(ii) 4 new deputy clerks.

(iii) 3 new district court judges, 1 each in Districts 10 (Wake), 11 (Harnett, Johnston, and Lee), and 26 (Mecklenburg), effective Jan. 15, 2009.

(iv) 3 judicial support staff in district court.

(v) 10 magistrate positions allocated as follows: 1 each in Durham, Forsyth, Gaston, and Guilford Counties; 2 in Wake; and 4 in Mecklenburg.

(vi) 3 new positions and upgrade of 8 part-time to full-time positions in GAL program;

(vii) 1 position for Sentencing and Policy Advisory Commission;

(viii) 2 positions for Innocence Inquiry Commission.

(b) Eliminates 1 vacant special superior court judge position, 2 judicial assistant positions authorized in 2007 budget for special superior court judges, and 2.75 drug treatment court positions authorized in 2007.

(c) Restores recurring funds to Conferences of District Attorneys and Clerks of Court, which were eliminated last year pending findings of a continuation review. by Legislative Research Commission.

(d) Repeals provision in 2007 budget which amended GS 7A-302 to require counties to provide telephones and telephone equipment and infrastructure to court facilities.

(e) Raises court costs as follows:

(i) Adds \$1 to court costs in criminal, civil, special proceedings, and estate cases to be used to upgrade and maintain courthouse phone systems. Effective July 20, 2008 for costs assessed and collected on or after that date, except in misdemeanor or infraction cases disposed of on or after that date by written appearance, waiver of trial and plea of guilty or admission of responsibility, the cost is the lesser of the new costs or the amount specified on the notice portion of the defendant's copy of the citation.

(ii) amends GS 7A-305(a2) to increase by \$20 (from \$55 to \$75) the cost to be assessed against person filing a divorce action with increase going to Domestic Violence Center Fund established under GS 50B-9. Effective July 20, 2008.

(f) Requires AOC to develop an interface between Offender Population Unified System (OPUS) and Automated Court Information System so that probation officers can have access to the most recent information on arrests and pending charges against probationers.

(g) Requires Sentencing and Policy Advisory Commission to conduct a feasibility study for measuring the effectiveness of programs that receive Juvenile Crime Prevention Council grants.

(h) Amends GS 7A-474.3 to add to the types of assistance that legal services receiving state funds may provide to consumers the following: predatory lending, loan services abuses, foreclosures, and other legal issues that relate to helping consumers avoid foreclosure and home loss.

(i) Requires Office of Indigent Defense Services (IDS) and AOC to develop a proposal for a statewide system to enable IDS to obtain information about indigent cases when counsel is first appointed.

(j) Authorizes IDS to use \$25,000 of appropriated funds to support a pilot program of alternative scheduling that would reduce defense attorney wait time and State expense. Requires district attorney, chief district court judge and senior resident superior court judge of district selected to approve pilot program.

(k) Repeals provision in 2007 budget authorizing funds for expansion of public defender offices, but adds approximately the same amount to funding for private assigned counsel.

(l) Adds Director of IDS to Judicial Retirement System and to longevity plan for elected judicial officials, and provides that salary of Director to be set by the General Assembly in the appropriations bill.

(m) Grants employees of the Judicial Branch a salary increase of the greater of \$1,100 or 2.75% and amends statutory provisions setting out salaries accordingly. Increases salary of Chief Judge of the Court of Appeals by an additional \$1,244 over the 2.75% increase to restore the differential in the salary between Chief Judge and other judges on Court of Appeals to pre-1994 levels and to make the differential equivalent to the differential between the Chief Justice and other members of the Supreme Court.

(n) Repeals GS 7A-305(a3) and (a4), which provide that petition for limited driving privilege is subject to civil court costs and additional \$100 fee, and amends GS 20-20.1, to provide that civil court costs and \$100 fee apply to petition for limited driving privilege under that section.

3. **S.L. 2008-150 (S 1263). *Appellate court elections public finance changes.*** Repeals GS 163-278.13(e2)(3), which provided a 21-day embargo on campaign contributions before the general election in the judicial public financing program if the contribution would cause the candidate to exceed the trigger for matching funds, and amends GS 163-278.67 to provide for expedited distribution of matching funds to eligible candidates. Effective August 2, 2008.

4. **S.L. 2008-181 (H 2431). *Studies of interest to court officials.*** Authorizes Legislative Research Comm'n to study prohibiting execution of person with severe mental disability; the felony murder rule, streamlining and making more cost effective the determination of whether a first degree murder case may be tried as a capital case; whether to report denial of pistol permit to SBI for entry into data base; expunction of youthful offenders' criminal records; timing issues involved in renewing concealed handgun permits; and standards applied in disputed child custody cases, including possible adoption of a presumptive joint custody standard.

Authorizes the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse to study the involuntary commitment statutes to determine if an individual ordered to undergo an examination by a physician or eligible psychologist is being appropriately supervised during the period of the individual's examination.

Creates Joint Legislative Study Committee on Civil Commitment of Sexual Predators Who Are Determined to be Incapable of Proceeding to Trial, with 5 members from the House and 5 from the Senate, to study whether current laws adequately address the public safety issues raised by defendants who are charged with committing a sex offense against a child, are found incapable of proceeding, and do not meet the criteria for involuntary commitment.

Creates a Partition Sales Study Committee to study issue of the impact of partition sale procedures on the economic use and loss of heir property and farmland by heirs. Committee of 18 members, including 1 clerk of superior court appointed by the Speaker and 1 appointed by the President Pro Tempore.

Creates Joint Legislative Study Commission on State Guardianship Laws to study various aspects of the guardianship laws specified in bill. Comm'n consists of 19 members, including the Director of the AOC or the Director's designee and a clerk of superior court appointed by the Speaker.

Effective August 2, 2008.

5. **S.L. 2008-193 (S 2056).** *Advanced court fees from counties and cities.* Formerly GS 7A-317 provided that counties and cities were not required to advance court costs and civil process fees. In the 2007 budget, the statute was amended to require cities and counties to advance all court fees except civil process fees. This bill amends GS 7A-317 to return to the old law by providing that counties and cities do not have to advance facilities fee, General Court of Justice fee, or civil process fees. However, they do have to advance miscellaneous fees set out in GS 7A-308 except in child support, child abuse or other actions filed by the department of social services. Effective July 1, 2008.
6. **S.L. 2008-194 (H 545).** *Change legal aid agencies qualified to receive state funds.* Amends GS 7A-474.4, -474.17 and -474.19 to delete Legal Aid Society of Northwest North Carolina from list of legal services agencies qualified to receive State funds for providing legal services. Effective on August 8, 2008.
7. **S.L. 2008-213 (H 2542).** *Designation of liaison personnel by court officials; limitation on lobbying.* Adds subsection (d) to GS 120C-500 requiring Chief Justice to designate at least one, but no more than 4 liaison personnel to lobby for legislative action for all offices, conferences, commissions, and other agencies established under Chapter 7A. Amends GS 120C-500(b), which currently provides that no State funds may be used to contract with persons to lobby, to provide that no State agency or “constitutional officer” may contract with individuals who are not employed by the State to lobby legislators. (Since judges, clerks, and magistrates are “constitutional officers” this provision would cover them.) Effective August 15, 2008.

The Governor vetoed the following bill:

(H 2167). *Increase width of boats that may be transported on highway without a permit.* Amends GS 20-116 to allow boats or boat trailers with an outside width of less than 120 inches to be towed without a permit; however boats or trailers of 102 to 114 inches may be towed only during daylight hours. Boats and trailers wider than 120 inches may only be towed with overwidth permit during daylight hours.