

2016 Legislation of Interest to Court Officials
UNC School of Government
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Each ratified act discussed here is identified by its chapter number in the session laws and the number of the original bill. When an act creates new sections in the North Carolina General Statutes (hereinafter G.S.), the section number is given; however, the codifier of statutes may change that number later. A session law may be viewed by clicking on the link provided in the text or by going to the General Assembly's website at <http://www.ncleg.net>.

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2016 Legislation Affecting Criminal Law and Procedure

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

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

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

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

For a comprehensive discussion of this session law, from which this brief summary was prepared, see Shea Denning, *Amendments to Notice and Demand Provisions for DWI Cases*, North Carolina Criminal Law Blog (UNC School of Government, June 22, 2016), <http://nccriminallaw.sog.unc.edu/amendments-notice-demand-provisions-dwi-cases/>.

2. **[S.L. 2016-17 \(S 734\)](#): State health director authorized to prescribe opioid antagonist by statewide standing order.** This session law, effective June 20, 2016, recodifies G.S. 90-106.2 as G.S. 90-12.7 (practitioner's treatment of overdose with opioid antagonist, with immunity from civil and criminal liability), and adds a provision authorizing the State Health Director to prescribe an opioid antagonist by means of a statewide standing order.
3. **[S.L. 2016-25 \(H 256\)](#): Allow partially disabled veteran to park in handicapped parking space.** Effective June 22, 2016: (1) amended G.S. 20-37.6(e)(1) allows a partially disabled veteran to park in a handicapped parking space when displaying a partially disabled veteran special plate; and (2) amended G.S. 20-37.6(c1) allows medical certification and recertification requirements for handicapped parking privileges to be satisfied by a disability determination issued by the U.S. Department of Veteran Affairs.
4. **[S.L. 2016-26 \(H 283\)](#): New Class I felony to violate first-degree trespass that involves reentry after removal by execution of valid order or writ of possession or the trespass occurs under color of title by person who knowingly creates false document of title or possession.** Amended G.S. 14-159.12 (first-degree trespass), effective for offenses committed on or after December 1, 2016,

provides that it is a Class I felony with a mandatory minimum \$1,000 fine if (1) the offense occurs on real property where the person has reentered after having previously been removed by the execution of a valid order or writ of possession; or (2) the offense occurs under color of title when the person had knowingly created or provided materially false evidence of an ownership or possessory interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. **S.L. 2016-101 (H 550): Authorize governmental unit to transfer ownership of animal upon its service retirement.** New G.S. 20-187.4, effective October 1, 2016, authorizes a state or local government unit to transfer ownership of an animal (horse, dog, or other animal) on its service retirement to the people set out in the statute and at a price and conditions the unit determines appropriate.

20. **S.L. 2016-102 (H 1021): Changing locations where certain registered sex offenders cannot go.** This session law, effective for offenses committed on or after September 1, 2016, responds to a federal district court case, *Doe v. Cooper*, declaring G.S. 14-208.18(a)(2) unconstitutionally broad under the First Amendment and G.S. 14-208.18(a)(3) unconstitutionally vague. For an analysis of this case, see Jamie Markham, *Federal Judge Enjoins 300-Foot Rule for Sex Offenders*, North Carolina Criminal Law Blog (UNC School of Government, April 28, 2016), <http://nccriminallaw.sog.unc.edu/end-300-foot-rule/>. For a discussion of this session law, see Jamie Markham, *Sex Offender Premises Restrictions Revised in Response to Doe v. Cooper*, North Carolina Criminal Law Blog (UNC School of Government, July 28, 2016), <http://nccriminallaw.sog.unc.edu/sex-offender-premises-restrictions-revised-response-doe-v-cooper/>.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2016 Motor Vehicle Legislation
Shea Riggsbee Denning

1. **S.L. 2016-10 (H 357). Amendments to procedures governing admissibility of written chemical analysis results in in DWI cases.** Effective for trials beginning on or after October 1, 2016, this session law amends provisions of G.S. 20-139.1 concerning notice and demand procedures for chemical analyses in DWI cases. First, it requires that the State provide the laboratory analysis of a defendant's blood or urine to the defendant *within 15 business days of receiving the report* in order to avail itself of the notice and demand procedures in G.S. 20-139.1(c1). It likewise requires the State to provide the chain of custody statement to the defendant within 15 business days of receiving it to utilize G.S. 20-139.1(c3)(3) and the chemical analyst's affidavit to the defendant within 15 business days of receipt to rely on the notice and demand procedures in G.S. 20-139.1(e2). The act also amends G.S. 20-139.1 to provide that the written objection filed by the defendant under (c1), (c3)(3), or (e2) or the defendant's failure to file a written objection under those provisions *remains effective at any subsequent calendaring of the proceeding*.
2. **S.L. 2016-25 (H 256). Allow partially disabled veteran to park in handicapped space.** The session law amends amends G.S. 20-37.6(e)(1) effective June 22, 2016 to allow a person with a partially disabled veteran registration plate to park in a handicapped parking space when displaying the partially disabled registration plate. It also amends G.S. 20-37.6(c1) to provide that medical certification and recertification requirements for a handicapped parking privileges may be satisfied by a disability determination issued by the U.S. Department of Veterans Affairs.
3. **S.L. 2016-59 (H 870). Security interests in manufactured homes.** This session law amends various provisions of Chapter 20 to specify how security interests in manufactured homes are to be perfected, when such security interests expire, and how they may be renewed and cancelled. New G.S. 20-4.01(18a) defines the term "manufactured home." Amendments to G.S. 20-109.2(d) governing the application for title by the owner of a manufactured home whose certificate of title has been cancelled are effective August 1, 2016 for titles issued on or after that date. The remainder of the session law is effective July 1, 2017.
4. **S.L. 2016-75 (H 523). Driver's license designation of American Indian.** This session law amends G.S. 20-7(n) to provide that a driver's license issued to an American Indian who requests that the license designate his or her race designate the person's race as "AI." The session law is effective October 1, 2016 for driver's licenses issued or renewed on or after that date.
5. **S.L. 2016-80 (H 1033). Waiver of identification card fee for person with a developmental disability.** This session law amends G.S. 20-37.7(d)(7) to waive the fee for a special identification card issued to a person with a developmental disability. The amendments are effective October 1, 2016 for special identification cards issued on or after that date.
6. **S.L. 2016-87 (H 1044). DMV to refuse registration or certificate of title for failure to pay certain civil penalties and fees.** This session law enacts new G.S. 20-54(13) to provide that DMV shall refuse registration or issuance of a certificate of title if it has been notified by the State Highway Patrol that the owner of the vehicle has failed to pay any civil penalty and fees imposed by the State Highway Patrol for a violation of Part 9 of Article 3 of Chapter 20, which governs the size, weight, construction and equipment of vehicles. These amendments are effective October 1, 2016 for violations committed on or after that date.

7. **S.L. 2016-90 (H 959). Various changes to transportation laws.** This session law, effective July 11, 2016, unless otherwise provided, makes various changes to the state’s transportation laws. Among the changes are the following:

Weight limit changes. Section 2.1 enacts new G.S. 20-118(c)(18) which creates an exception to weight limit requirements for certain vehicles that are transporting metal commodities. New G.S. 20-118(c)(19) extends certain federal weight allowance provisions to most state roads. New G.S. 20-119(i) provides that up to three steel coils transported on the same vehicle must be considered a nondivisible load for purposes of permit issuance.

Issuance of toll bills via email. Section 3 amends G.S. 136-89.21 to permit the NC Turnpike Authority to send toll bills via electronic mail, with the written consent of the registered owner or the person who had care, custody or control over the vehicle.

Reducing fees and penalties for tolls. Section 3.1 requires the Turnpike Authority to report to the General Assembly on January 31, 2017 and in its annual report thereafter the number of one-time toll facility users who are charged more than \$50 in processing fees and civil penalties. With the first report, the Turnpike Authority must propose statutory changes to improve efficiency or reduce costs in collecting tolls “while significantly reducing the possibility one-time users are charged more than [\$50] in processing fees . . . and civil penalties.”

Bicycles and safety. Sections 5.1 and 5.5 enact several provisions related to the operation of bicycles and cyclist safety. The act amends G.S. 20-129(e) effective December 1, 2016 to require that bicycles operated at night on a public street, public vehicular area, or public greenway have:

- A lighted lamp on the front, visible from at least 300 feet in front of the bicycle;
- A reflex mirror on the rear; and
- A lighted lamp on the rear, visible from at least 300 feet to the rear of the bicycle, *or* the operator must wear clothing or a vest that is bright and visible from a distance of at least 300 feet to the rear of the bicycle.

G.S. 20-150(e) is amended effective October 1, 2016 to provide that the prohibition against passing does not apply if each of the following conditions is satisfied:

- The slower moving vehicle to be passed is a bicycle or moped;
- The slower moving vehicle is proceeding in the same direction as the faster moving vehicle;
- The driver of the faster moving vehicle either (i) provides a minimum of four feet between the faster moving vehicle and the slower moving vehicle or (ii) completely enters the left lane of the highway; and
- The operator of the slower moving vehicle is not (i) making a left turn or (ii) signaling in accordance with G.S. 20-154 that he or she intends to make a left turn.

G.S. 20-154(a1) and (a2) are amended effective October 1, 2016 to apply to motorists whose unsafe movement affects bicyclists. As a result:

- Unsafe movement that causes a bicycle operator to change travel lanes or leave the road is an infraction subject to a fine of not less than \$200.
- Unsafe movement that results in a crash causing property damage or personal injury to a bicycle operator or passenger is an infraction subject to a fine of at least \$500.
- Unsafe movement that results in a crash causing property damage of more than \$5,000 or serious bodily injury to a bicycle operator or passenger is an infraction subject to a fine of at least \$750.
- DMV must treat a violation of G.S. 20-154(a2) affecting a cyclist as a failure to yield the right-of-way to a bicycle under G.S. 20-16©, which results in the assessment of four driver’s license points.

Amendments to CDL laws. Section 6 amends the laws governing commercial driver's licenses, effective January 1, 2017. G.S. 20-7(m) is amended to remove the provision allowing issuance of a restricted instruction permit for a school bus driver applicant. Amendments to G.S. 20-37.13(e) remove language authorizing the renewal or reissuance of a commercial learner's permit. Amendments to G.S. 20-17.4(g) and (h) lengthen the disqualification periods for violation of an out-of-service order. New G.S. 20-37.13A incorporates federal medical qualifications standards for commercial drivers and enacts an intrastate medical waiver provision.

Registration expiration. Section 7 enacts new G.S. 20-66(g1), effective October 1, 2016 for registration renewals on or after that date, which provides that the registration of a vehicle renewed by means of a new registration plate expires at midnight on February 15 of each year.

Temporary driving certificates. Section 8 amends G.S. 20-7(f)(5) to render temporary driving certificates valid for 60 (was, 20) days and to provide that such certificates may be used for identification when conducting DMV business. These amendments are effective January 1, 2017. The extended period of validity applies to temporary driving certificates issued on or after that date.

Testing for license issuance. Section 9 amends G.S. 20-7(c), effective October 1, 2016, to provide that DMV must require sign and symbol testing upon issuance of a license. DMV must require vision testing as a part of required in-person, in-office license renewals.

DMV may provide notice by email. Section 10 amends various provisions of Chapter 20, effective October 1, 2016, to allow a person to provide his or her e-mail or electronic address to DMV and to consent to receiving DMV notices electronically. Amendments to G.S. 20-7.1(a) require a person who provides DMV with an e-mail or electronic address to notify DMV of any change or discontinuance of the e-mail or electronic address within 30 days of the change or discontinuance. New G.S. 20-43.1(f) provides that email and other electronic addresses provided to DMV are personal information.

Titling of vehicles. Section 10.5 amends G.S. 20-52(a), effective January 1, 2017, to require that DMV applications for certificates of title contain an option for co-owners to use to title a vehicle as a joint tenancy with right of survivorship. Section 11 amends G.S. 20-53(e), effective January 1, 2017, to require that DMV complete a vehicle verification before issuing title for an out of state vehicle that is 1980 model year or older (was, 35 model years or older).

Elimination of requirement that owner sign registration card. Section 12 amends G.S. 20-57(c), effective December 1, 2016, to eliminate the requirement that vehicle owners sign their vehicle registration cards. This section also repeals the penalty provision in G.S. 20-176(a1)(2) for failure to sign the vehicle registration card.

Amendments to definition of autocycle. Section 12.5 amends the definition of autocycle in G.S. 20-4.01 to remove the requirement that an autocycle have airbags or completely enclosed seating. Amendments to G.S. 20-140.4(a)(2) provide that safety helmets do not have to be worn in an autocycle only if it has completely enclosed seating.

Electric assistive bicycles, motor-driven bicycles and mopeds. Section 13 enacts new G.S. 20-4.01(7a), which defines an electric assistive bicycle. The definition for motor vehicle in G.S. 20-4.01(21a) is amended to exclude electric assistive bicycles. New G.S. 20-4.01(27)c2. defines the term motor-driven bicycle. New G.S. 20-4.01(27)d1. defines the term moped, incorporating the definition formerly codified in G.S. 105-164.3(22), and adding that motor-driven bicycles and electric assisted bicycles are not mopeds and noting that a moped's motor may be powered by electricity, alternative fuel, motor fuel, or a combination of each.

Officers to provide accident reports to insurance companies. Section 13.8 amends G.S. 20-166.1(e) to permit a law enforcement officer to forward an uncertified copy of an accident report to an insurance agent or company upon a driver or insurance company's request if evidence satisfactory

to the officer is provided showing a certified copy of the report has been requested from DMV and the fee in G.S. 20-42 has been paid.

8. **[S.L. 2016-94 \(H 1030\)](#). 2016 Appropriations Act.** This session law makes several changes to the motor vehicle laws, effective July 1, 2016, unless otherwise noted.

Signatures and photos may be shared with state CIO and board of elections. Section 24.1 amends G.S. 20-43 to allow DMV to release a person's signature and photograph to the state's chief information officer for purposes of data sharing under G.S. 143B-1385 and to the state board of elections.

No DMV fees to mercury switch removal account. Section 35.3(a) amends G.S. 20-85(a1) to eliminate the appropriation of DMV fees to the mercury switch removal account in the Department of Environmental Quality.

Late registration fees made permanent. Section 35.13 repeals the sunset provision for G.S. 20-88.03, which establishes late fees for motor vehicle registrations.

Permanent registration plates for public transportation service vehicles. Section 35.16 enacts new G.S. 20-84(b)(20), which permits DMV to issue permanent registration plates for a motor vehicle owned by a public transportation service provider that receives Federal Transit Administration formula grant funds.

Changes to DMV's medical review program and to license provisions for persons with physical or mental disabilities or diseases. Section 35.20 revises DMV's medical review program. Amendments to G.S. 20-9(e) provide that DMV may not issue a driver's license to a person who in DMV's opinion is unable to exercise reasonable and ordinary control over a motor vehicle. New G.S. 20-15(a)(4) and (5), effective for licenses issued or renewed or hearings requested on or after July 1, 2016, provide that DMV may cancel a driver's license upon determining that a licensee suffers from a physical or mental disability or disease that affects his or her ability to safely operate a motor vehicle or the licensee has failed to submit a certificate from a medical authority required by G.S. 20-7(e) or from a health care provider required under G.S. 20-9(g). Amendments to G.S. 20-9(g) provide that DMV may issue a restricted or unrestricted driver's license to an otherwise eligible applicant who suffers from a physical or mental disability or disease that affects his or her ability to control a motor vehicle if certain specified amended conditions are satisfied. The hearing procedures for applicants whose licenses are restricted, cancelled or denied by DMV based on a physical or mental disability also are amended as is the composition of the review board.

9. **[S.L. 2016-120 \(S 791\)](#). Adjustment of fees paid to tag agents.** This session law amends G.S. 20-4.02(a) to add G.S. 20-63(h) (providing for per-transaction fees to be paid to DMV tag agents) to the fees that DMV is to adjust for inflation beginning July 1, 2020. Amendments to G.S. 20-63(h) provide, as of October 1, 2016, that the removal of an inspection stop is considered a separate transaction fee for which \$1.30 compensation must be paid. Finally, effective October 1, 2016, the session law directs DMV and DOT to study the procedure for processing inspection stops.

2016 Child Welfare Legislation
Sara DePasquale

S.L. 2016-94 (H1030): Appropriations Act of 2016. Subpart 12.C addresses the Department of Health and Human Services Division of Social Services. Effective July 1, 2016, the following amendments were made to G.S. Chapter 7B.

- **Caretakers.** Sections 12C.1.(d) and (f) (pages 76-77 of the pdf version) amends G.S. 7B-101(3) to add to the definition of caretaker “a potential adoptive parent during a visit or trial placement with a juvenile in the custody of a department” and amends G.S. 7B-401.1(h) to remove a caretaker from the list of persons or agencies authorized to intervene in an abuse, neglect, or dependency proceeding.
- **Confidentiality.** Section 12C.1.(e) (page 77 of the pdf version) amends G.S. 7B-302(a1)(1) and adds a private child placing or adoption agency licensed by NC DHHS to the agencies a county department shall disclose confidential information to in order to protect a juvenile from abuse or neglect.
- **Reasonable Efforts.** Section 12C.1.(g) (pages 77-78 of the pdf version) amends G.S. 7B-901(c). After concluding there is compelling evidence warranting reasonable efforts for reunification, the court order may those reasonable efforts with a parent continue.
- **Concurrent Planning.** Section 12C.1.(h) (page 78 of the pdf version) adds subsection (a1) to G.S. 7B-906.2, which eliminates concurrent permanency planning when a permanent plan has been achieved.
- **Statewide Child Welfare Plans.** Sections 12C.1.(a), (b), and (c) (page 76 of the pdf version) addresses the need for statewide plans and systems.
 - The State must implement NC DHHS’s Program Improvement Plan (PIP), which the state was required to create after the 2015 federal Child Family Service Review found the state was not in substantial conformity with any of the 14 factors that were assessed. Semiannual reports must be submitted to the Joint Legislative Oversight Committee on Health and Human Services between August 1, 2016 and February 1, 2019.
 - By December1, 2016, the Division of Social Services must develop a statewide strategic plan and submit it to the Joint Legislative Oversight Committee on Health and Human Services. The plan must (1) complement the PIP, (2) address findings from the evaluation of the state’s child welfare system required by S.L. 2014-100, and (2) ensure Native American children are served in a culturally appropriate manner.
 - The Division of Social Services must continue to add child welfare information and data to NC FAST so as to be able to track children and outcomes across counties. The Division must make quarterly reports to the Joint Legislative Oversight

Committee on Health and Human Services between August 1, 2016 and February 1, 2018. The system is intended to be operational by December 31, 2017.

S.L. 2016-115 (H424): Unlawful Transfer of Custody of Minor Child. This act creates a new crime and amends statutes related to child welfare and adoption.

- **New Crime.** Effective for all offenses committed on or after December 1, 2016, Section 1 creates G.S. 7B-321.2, which makes it a Class A1 misdemeanor or Class G felony if a child suffers serious physical injury when (1) a biological or adoptive parent, legal guardian, or legal custodian unlawfully transfers physical custody of his/her child, (2) a person accepts or attempts to accept physical custody of a child through an unlawful transfer (unless that person contacts and makes the child available to local law enforcement and/or a county child welfare agency), or (3) a person advertises, recruits, solicits, or helps another to advertise, recruit, or solicit the unlawful transfer of custody of a child. Unlawful transfer is defined and includes nine enumerated exceptions that relate to authorized procedures for a child's adoption, temporary transfers for specified periods of time, or transfers to relatives. Relatives and parent are defined for purposes of this statute.
- **Child Welfare.** Effective December 1, 2016, Section 3 amends the definition of neglected juvenile found at G.S. 7B-101(15) to include a juvenile whose physical custody has been unlawfully transferred. Section 4 amends G.S. 7B-302(a) to add that the county department must immediately initiate an assessment of a report that a child has been unlawfully transferred.

Adoption. Effective July 28, 2016, Section 2 amends G.S. 48-10-101(b) to explain "public medium" as related to advertisements includes computerized systems such as the internet and email. Section 5 requires NC DHHS to develop a program that provides support to adoptive families who are at risk of an adoption dissolution.

2016 Estates and Guardianship Legislation Meredith Smith

S.L. 2016-72 (H 817): Uniform Adult Guardianship Jurisdiction Act. Enacts a new G.S. Chapter 35B adopting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) which addresses jurisdictional issues that arise when more than one state is involved in a guardianship proceeding. Specifically, UAGPPJA prescribes a process for determining (i) the most appropriate state for an initial filing, including cases involving an emergency, (ii) the procedure for transferring cases from state to state, and (iii) the registration of orders in states other than the state of primary jurisdiction. This act pertains to jurisdictional issues only and the established system in North Carolina for determining incompetency, appointing guardians, and managing estates as governed by G.S. Chapter 35A is not affected by the new Chapter 35B. The act is effective December 1, 2016.

S.L. 2016-53 (S 805): Fiduciary Access to Digital Assets. Enacts a new G.S. Chapter 36F to extend the authority of a fiduciary to access a person's digital assets and to prescribe the procedure by which a fiduciary may obtain such access. The act applies to and amends statutes relevant to (i) a fiduciary acting under a will or power of attorney, (ii) a personal representative acting for a decedent, (iii) a Chapter 35A guardian for an adult or a minor, and (iv) a trustee under a trust. The act is effective on June 30, 2016.

2016 Juvenile Delinquency Legislation
LaToya B. Powell

S.L. 2016-94 (H 1030): Pilot Program to Raise High School Dropout Age from 16 to 18. Section 8.21(a) of the 2016 Appropriations Act authorizes the Hickory Public Schools, Newton-Conover City Schools, and Rutherford County Schools to establish and implement a pilot program to increase the high school dropout age from 16 to 18, beginning with the 2016-2017 school year and continuing for subsequent school years. Each local school system may use available funds to implement the pilot program, including (i) hiring up to three additional teachers, (ii) funding additional student-related costs, such as transportation and technology, and (iii) operating a night school program for at-risk students. To the extent possible, Hickory Public Schools and Newton-Conover City Schools must partner with Catawba Valley Community College, and Rutherford County Schools must partner with Isothermal Community College in administering the pilot program. For purposes of implementing the pilot program:

- the local school systems may provide that if a parent, guardian, or custodian, or a student if age 18, has not made a good faith effort to comply with the compulsory school attendance law, the principal must notify the district attorney; and if the student is under age 18, the director of the county Department of Social Services;
- if a student under age 18 is habitually absent from school and the student's parent has made a good faith effort to comply with law, the principal may file a complaint with a juvenile court counselor pursuant to Chapter 7B that the student is habitually absent from school without a valid excuse;
- the local school systems must establish rules prescribing when an 18-year-old student may be excused from compulsory school attendance, including when the student has obtained a high school equivalency certificate or has enrolled in the military;
- a parent, guardian, or custodian, or student if age 18, who violates the provisions of the pilot program without a lawful exception under this section or Chapter 115C may be charged with a Class 1 misdemeanor; and
- if a student, parent, or other person files an affidavit with a school subject to this pilot program indicating that a student is unable to comply with compulsory school attendance by reason of necessity to work or labor for the support of the student or the student's family, a school social worker must investigate the matter and notify the appropriate court, depending on the child's age. If the court finds the student or the student's parents are making a bona fide effort to comply but are unable to do so by reason of illness, lack of earning capacity, or any other valid cause, the court shall determine what help is needed for the student or family to enable compliance with the compulsory school attendance law.

The local school systems, in collaboration with the State Board of Education, must submit a report to specified legislative committees on the effectiveness of the pilot programs by January 15, 2018, and then bi-annually until the end of the operation of the pilot programs.