

2010 LEGISLATION OF INTEREST TO COURT OFFICIALS

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Contents

Criminal Law & Procedure	1
Civil Procedure; Estates & Special Proceedings	11
Juvenile Law	14
Motor Vehicle Law	16
Judicial Authority & Administration	20

Criminal Law & Procedure

- 1. S.L. 2010-5 (S 140): Felony trespassing at safe house by person subject to domestic violence protective order.**
Effective for offenses committed on or after December 1, 2010, adds G.S. 50B-4.1(g1) to make it a Class H felony for a person: (1) who is subject to a valid protective order under G.S. Ch. 50B; (2) to enter property operated as a safe house or haven for victims of domestic violence; (3) where a person protected by the order is residing. Provides that a violation occurs regardless of whether the person protected by the order is then present on the property. Also adds G.S. 1-620, effective June 7, 2010, to limit the liability of domestic violence shelters and people associated with such shelters for damages in a tort action as a result of harm caused on the shelter's premises by a person who is not associated with the shelter.
- 2. S.L. 2010-16 (S 254): Increased penalty for malicious abuse, torture or killing of animal ("Susie's Law").**
Effective for offenses committed on or after December 1, 2010, amends G.S. 14-360(a1) to increase the punishment from a Class A1 misdemeanor to Class H felony for maliciously killing an animal by intentionally depriving the animal of necessary sustenance; and amends G.S. 14-360(b) to increase the punishment from a Class I to

Class H felony for maliciously torturing, mutilating, maiming, beating, disfiguring, poisoning, or killing an animal.

3. **S.L. 2010-22 (S 992): Pyrotechnic operator’s license.**

Makes several changes to licensing requirements for pyrotechnic operators, contained in G.S. Chapter 58, Article 82A. Effective October 1, 2010, amends G.S. 14-410(a1) to conform to these licensing changes by providing that a pyrotechnics display by a properly licensed person is permissible.

4. **S.L. 2010-31 (S 897): Budget.**

Cost increases. Amends G.S. 7A-304(a) to increase criminal district court costs from \$95.50 to \$105.50 and failure to appear fee from \$25 to \$50, effective for costs assessed or collected on or after October 1, 2010. (Note change to effective date in S.L. 2010-123, below.) Effective July 1, 2010, amends G.S. 7A-314(d) and 7A-343 to authorize AOC to adopt rules for compensation of experts acting on behalf of the court or prosecutorial offices. (Rules would not apply to defendants’ experts.) Effective for fees assessed or collected on or after October 1, 2010, amends G.S. 7A-455.1 to increase attorney appointment fee in criminal cases from \$50 to \$60. Amends G.S. 15A-1343 (probation), 15A-1368.4 (post-release supervision), and 15A-1374 (parole) to increase the monthly supervision fee from \$30 to \$40; applies to people placed on supervision prior to, on, or after October 1, 2010, which appears to mean that the increases apply to fees accruing for such people on or after October 1, 2010. Amends G.S. 143B-262.4 to increase the community service fee from \$225 to \$250, effective for fees assessed or collected on or after October 1, 2010. (Note change to effective date in S.L. 2010-123, below.) *Elimination of Class 3 misdemeanors.* States that “[i]t is the intent of the General Assembly that there be only three misdemeanor punishment levels: Class A1, Class 1, and Class 2.” Directs the North Carolina Sentencing and Policy Advisory Commission, in consultation with the Conference of District Attorneys, the Office of Indigent Defense Services, and the UNC School of Government, to review all Class 3 misdemeanor offenses and make recommendations to the 2011 General Assembly for reclassifying each Class 3 misdemeanor as an infraction or Class 2 misdemeanor. Also authorizes Commission to consider other misdemeanor offenses for reclassification as infractions. *Other changes.* Directs the Dept of Correction to develop a plan for a pilot program on privatization of probation.

For a further discussion of the budget, see Judicial Authority & Administration, below.

5. **S.L. 2010-49 (H 1307): Constitutional amendment to bar convicted felon as sheriff.** See Judicial Authority & Administration, below.

6. **S.L. 2010-67 (S 887): Recycling of computer equipment and televisions.**

Adds a new part 2H to G.S. Chapter 130A containing recycling requirements for discarded computer equipment and televisions, applicable to manufacturers, retailers, and discarded equipment collectors. Provides in new G.S. 130A-309.139 that requirements are enforceable as provided in Part 2 of Article 1 of G.S. Chapter 130A,

which in addition to various civil and administrative remedies makes a violation a misdemeanor under G.S. 130A-25. Effective August 1, 2010, except for certain requirements with later effective dates, identified in act.

7. **S.L. 2010-94 (H 1403): DNA samples at time of arrest.**

This bill amends the DNA collection statutes to provide that on arrest for certain offenses, a defendant must provide a DNA sample. The sample is to be a cheek swab. It adds a new G.S. 15A-502A to require that the sample be obtained at the time of arrest, and it amends the pretrial release statutes (G.S. 15A-534(a)) to provide that if a defendant is required to provide fingerprints or a DNA sample and has refused to do so, the pretrial release must include a condition requiring that the person arrested provide the sample or prints. *Procedure.* The procedure to collect the sample and the list of offenses for which samples are required at time of arrest are in a new G.S. 15A-266.3A. That statute requires law enforcement officers to obtain the sample from a person who is arrested. The officer must complete a form to be provided by SBI containing the details of the sampling process, and the form must be in the “case file” and be available to the prosecutor. The officer also must provide a form to the person arrested notifying him or her of the procedures to have the sample removed from the DNA database and the records of the sample expunged. The sample must be expunged if the prosecutor dismisses the charge, the person is acquitted, the person is convicted of a lesser-included misdemeanor not covered by the DNA sampling law, no charge is filed within any applicable statute of limitations, or three years pass from the date of the arrest without a conviction or an active prosecution. Until June 1, 2012, the person arrested must petition the prosecutor to request expunction if no charges are filed or three years pass with no action in the case. After June 1, 2012, the prosecutor is responsible for seeking expunction without a request from the person arrested. If there is a dismissal, acquittal, or conviction of a lesser-included offense, the prosecutor must initiate steps to expunge the sample. The court is not involved except to sign verification forms if the person is acquitted or the charge is dismissed. The person arrested may file a motion to compel the prosecutor to act or to contest a prosecutor’s decision not to act. Any identification, warrant, probable cause to arrest, or arrest based on a DNA match that occurs after the statutory period for expunction is invalid and inadmissible in the prosecution of the person for any criminal offense. The offenses covered by the new arrest sampling provisions are murder, homicide, rape and sex offenses, specified assaults (G.S. 14-32, 14-32.4(a), 14-34.2, 14-34.5, 14-34.6, and 14-34.7), kidnappings or human trafficking offenses, burglary offenses, arson, armed robbery, sex offenses requiring registration, cyberstalking, and stalking, as well as attempts, solicitations, or aiding and abetting any of the covered offenses. The bill also expands the uses for which the DNA database may be used to include forensic casework, analysis of unidentified persons, and missing persons. Effective Feb. 1, 2011.

See S.L. 2010-147, discussed in the Judicial Authority & Administration section below, on the fee imposed to support the SBI DNA lab.

8. **S.L. 2010-96 (S 1165): Community service fee technical corrections.**
Amends G.S. 143B-262.4 to provide that fee paid by parolees required to perform community service is to be paid to the clerk of court for the county in which the person was convicted and not in the county where the person was released on parole. Effective July 20, 2010.
9. **S.L. 2010-97 (S 1242): Immigration prisoner status technical correction.**
Amends G.S. 162-62 to provide that if jailer cannot determine if person arrested for felony or impaired driving is a legal resident of the U.S., jailer is to contact Immigration and Customs Enforcement Office of the Department of Homeland Security instead of the Division of Criminal Information of the State Bureau of Investigation. Effective July, 20, 2010.
10. **S.L. 2010-103 (H 80): Electronic sweepstakes.**
Adds G.S. 14-306.4 making it unlawful for a person: (1) to operate or place into operation; (2) an electronic machine; (3) either to (a) conduct a sweepstakes through the use of an entertaining display, including the entry process or the reveal of a prize or (b) promote a sweepstakes that is conducted through the use of an entertaining display, including the entry process or the reveal of a prize. Contains lengthy definitions in G.S. 14-306.4(a), including of “electronic machine or device,” “entry,” “entertaining display,” and “prize.” Makes a violation a Class 1 misdemeanor for the first offense, a Class H felony for a second offense, and a Class G felony for a third or subsequent offense. Provides that each violation is a separate offense. Exempts activities lawfully conducted on Indian lands. Amends G.S. 14-298 (seizure of illegal gaming items) to cover electronic machines or devices using an entertaining display in violation of new G.S. 14-306.4; and amends G.S. 14-306.1A(b) (definition of video gaming machine) to cover any video game not dependent on skill or dexterity that is played while revealing a prize as the result of an entry into a sweepstakes. Also amends G.S. 14-306(a) and 14-306.1A(b) to expand the definition of slot and video gaming machines to include additional forms of payment, such as use of a prepaid card. Effective for offenses committed on or after December 1, 2010.
11. **S.L. 2010-104 (H 859): Retired probation officers exempt from weapons safety course.**
Amends G.S. 14-415.10 to exempt retired probation and parole officers from the weapons safety course generally required to obtain a permit to carry a concealed weapon. To qualify, officer must be retired under state retirement system, have been eligible to carry a handgun in performance of his or her duties, and never had a disciplinary violation that would have affected the right to carry a handgun on the job. Effective December 1, 2010, and retroactively applicable to any currently retired officers.
12. **S.L. 2010-106 (H 1762): Domestic violence training for district court judges and magistrates.**
Effective July 20, 2010, requests that the North Carolina Supreme Court establish minimum education and training standards for district court judges handling civil and

criminal domestic violence cases. Also encourages the UNC School of Government to provide education and training opportunities for district court judges and magistrates handling such cases.

13. S.L. 2010-107 (H 1115): Electronic notification to the media of parole of person serving life sentence.

Effective July 20, 2010, amends 15A-1371(b)(3) to allow the Post-Release Supervision and Parole Commission to notify the media electronically, rather than by mail, when it is considering parole of a person serving a life sentence. (This provision does not apply to people who received a life sentence for an offense committed on or after October 1, 1994; they are not eligible for parole.)

14. S.L. 2010-108 (H 1260): Modifications to ban on possession of firearm by convicted felon.

Amends various statutes, described below, to allow people convicted of certain felonies to apply for restoration of the right to possess firearms and to create an exception from firearms restrictions for certain white collar criminal convictions. Provides that changes become effective February 1, 2011 and apply to offenses committed on or after that date. Also directs North Carolina Attorney General, effective July 20, 2010, to request the U.S. Department of Justice and other federal agencies to review these changes and determine whether a person who qualifies under them may purchase and possess a firearm under federal firearms restrictions.

New G.S. 14-415.4 contains the new restoration procedures. The new statute gives the responsibility for hearing restoration petitions to the district court in the district where the person resides. New G.S. 14-415.4(i) states that restoration does not constitute an expunction or pardon, and G.S. 14-415.4(l) states that the knowing and willful submission of false information is a Class 1 misdemeanor and permanently bars restoration of firearm rights.

The initial prerequisite for restoration is that the person must have no more than one conviction for a “nonviolent felony,” which is defined as not including any Class A, B1, or B2 felony or any Class C through I felony that involves an assault as an essential element, possession or use of a firearm or deadly weapon as an essential or nonessential element, or other specified circumstances. Multiple nonviolent felony convictions arising out of the same event and consolidated for sentencing count as one felony. A person is ineligible for restoration for various reasons listed in the statute, including having been adjudicated guilty of or having received a prayer for judgment continued or a suspended sentence for one or more misdemeanor crimes of violence or other listed misdemeanors. To obtain restoration, the person must have had their civil rights restored (which typically occurs automatically under G.S. 13-1 following a person’s completion of all incidents of his or her sentence) for at least 20 years. The new statute also states that a person who was convicted of a nonviolent felony in another jurisdiction is eligible for restoration if his or her civil rights, including the right to possess a firearm, have been restored for at least 20 years in the other jurisdiction; this provision may inadvertently make the waiting period for restoration of firearm rights in North Carolina considerably longer for people with convictions from other jurisdictions because they may not be able to obtain

restoration of their firearm rights in the other jurisdiction for some time after their citizenship rights have been restored there. New G.S. 14-415.4 establishes other criteria a person must satisfy to obtain restoration of firearm rights, such as a one-year period of residency in North Carolina. The act amends G.S. 14-415.1 (possession of firearm by a felon) to provide that a convicted felon whose firearm rights have been restored is not subject to the prohibition in that statute; similarly, the act amends G.S. 14-404(c) (handgun permits) and G.S. 14-415.12(b) (concealed handgun permits) to provide that people whose firearm rights have been restored are eligible to obtain the indicated permits if they meet the other criteria for issuance.

The act also amends the above statutes to exempt from the firearms restrictions felony convictions pertaining to antitrust violations, unfair trade practices, or restraints of trade. People convicted of these felonies do not need to apply for restoration of their firearms rights (unless convicted of other nonviolent felonies); the changes exempt them from the firearms restrictions.

15. [S.L. 2010-122](#) (H 1717): Impact of certain convictions on contract to enforce ABC laws; minimum age standards for law enforcement.

Makes several changes to administration of alcoholic beverage control (ABC) system. Among other things, effective October 1, 2010, amends G.S. 18B-202 and 18B-501(g) to provide that, in addition to any other authorized penalty, a judge may prohibit an individual convicted of a violation of G.S. Chapter 18B or of a felony from participating in any contract to enforce the ABC laws for a local board if that individual is a designated officer of an agency that holds a contract to enforce the ABC laws for a local board. Also authorizes a judge in such a case to prohibit an individual from being designated as an officer that enforces the ABC laws under a contract with a local board for a period of not longer than three years. (For a summary of the other ABC law revisions, click [here](#).)

Effective July 21, 2010, amends G.S. 93B-9, which provides that no occupational licensing board may require than an individual be more than 18 years old to receive a license, to except certifications issued by the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission pursuant to G.S. Chapters 17C, 17E, 74E, and 74G.

16. [S.L. 2010-123](#) (S 1202): Budget technical correction.

Amends Section 15.5(c) of S.L. 2010-31, discussed above, to make it clear that the court cost increase in that bill does not apply to cases in which the criminal process was issued before the effective date of the increase, the citation is paid after the date of the increase, and the amount of costs paid is the amount listed on the citation. Also amends Section 19.4(b) of S.L. 2010-31 to make it clear that the community service fee increase applies to people ordered to perform community service on or after October 1, 2010.

17. [S.L. 2010-127](#) (H 1741): Use of controlled substances for animal euthanasia.

Effective October 1, 2010, revises G.S. 90-101 to allow an animal shelter to obtain sodium pentobarbital and other approved drugs for the euthanasia of animals and to

allow a person certified to perform animal euthanasia to possess and use such drugs to euthanize dogs and cats held by the shelter. Amends G.S. 19A-24(b)(7) to authorize the Board of Agriculture to adopt rules providing for the denial, suspension, or revocation of the certification of a euthanasia technician who has been convicted of or entered a plea of guilty or no contest to a felony, misdemeanor, or infraction involving animal abuse or neglect, or any offense related to animal euthanasia. Adds G.S. 19A-24(c) to allow the Department of Agriculture and Consumer Services to deny, revoke, or suspend the certification of a euthanasia technician who has been convicted of or entered a plea of guilty or no contest to a felony involving a controlled substance. Also adds G.S. 19A-24(d) requiring a person seeking or renewing certification as a euthanasia technician to consent to a criminal record check.

18. [S.L. 2010-135](#) (H 1812): Pretrial release in domestic violence cases.

Effective October 1, 2010 (meaning effective for pretrial release determinations on or after that date), amends G.S. 15A-534.1(a), known as the 48-hour law. Provides that in setting pretrial release conditions in domestic violence cases subject to the 48-hour law, the judge must direct a law enforcement officer or district attorney to provide a criminal history report for the defendant and that the judge must consider the report. Also provides that after setting conditions the judge must return the report to the agency that provided the report; it is not placed in the case file. Prohibits unreasonable delay in setting conditions for the purpose of reviewing the criminal history report. (These requirements also appear to apply to magistrates who set pretrial conditions under the 48-hour law because G.S. 15A-534.1(b) states that if a judge has not acted within 48 hours of arrest, the magistrate must set conditions under the provisions of G.S. 15A-534.1.)

19. [S.L. 2010-145](#) (H 1714): Suspension, revocation, and reissuance of marine fisheries license.

Directs Marine Fisheries Commission to adopt rules, to take effect October 1, 2012, related to the suspension, revocation, and reissuance of licenses to take resources under its jurisdiction. Amends G.S. 113-171, which allows adverse license actions based on certain convictions, to provide that licenses are subject to that section and Commission rules.

20. [S.L. 2010-147](#) (H 1973): Fee to support SBI DNA lab. See Judicial Authority & Administration, below.

21. [S.L. 2010-152](#) (S 900): Studies.

Authorizes Joint Legislative Corrections, Crime Control, and Juvenile Justice Committee of the General Assembly to study the use of unsecured bonds. Extends reporting date of the Joint Select Committee on the Preservation of Biological Evidence to 2011. Also authorizes a study on comparative negligence; for that portion see the Judicial Authority & Administration section below.

22. **S.L. 2010-154 (S 1337): Training of operators of underground storage tanks.**
Adds Part 2D to Article 21A of G.S. Chapter 143 to require training of operators of underground storage tanks. Requires compliance with the training requirements by August 8, 2012, and thereafter as provided in the act. Provides in G.S. 143-215.94TT that the new part is enforceable as provided in G.S. 143-215.94X, which imposes criminal penalties for violations, as well as under civil enforcement statutes.
23. **S.L. 2010-156 (H 1824): Trapping of coyotes.**
Adds G.S. 113-291.6(h) to allow a person with a depredation permit to take coyotes with a Collarum or similar trap approved by the Wildlife Resources Commission. Also amends 113-274(c)(1a) to require the Commission to issue a depredation permit for coyotes to livestock and poultry owners on request.
24. **S.L. 2010-159 (H 1682): Corporal punishment of a student with a disability.**
Effective with the 2010-11 school year, adds G.S. 115C-391(a)(5) to prohibit corporal punishment of a student with a disability as defined in G.S. 115C-106.3(1) or section 504 of the federal Rehabilitation Act of 1973 if the student's parent or guardian has stated in writing that corporal punishment should not be administered. (As a consequence, corporal punishment on such a student may constitute an assault under North Carolina criminal law.)
25. **S.L. 2010-171 (S 144): Innocence Inquiry Commission amendments.**
Deletes provisions sunseting Commission as of December 1, 2010, thereby making the Commission a permanent state agency. Amends G.S. 15A-1469 to authorize AOC Director to appoint a special prosecutor when the Commission recommendation is presented at a trial; provides that the special prosecutor may not have participated in the original trial and that the Director may not appoint a special prosecutor unless the original DA or Commission Chair requests it, based on alleged prosecutorial misconduct in the original trial. Amends G.S. 15A-1469 to specify that evidence introduced at original trial may be introduced at trial to consider Commission recommendations if the evidence is relevant. Amends G.S. 15A-1469 and other related statutes to provide that if a person is found to be innocent by three-judge panel, the person is eligible for compensation from state without first receiving a pardon (compensation is at rate of \$50,000 per year of confinement). Effective October 1, 2010.
26. **S.L. 2010-193 (H 1412): National Guard courts-martial revisions.**
See Judicial Authority & Administration, below. Among other changes, effective December 1, 2010, amends G.S. 127A-54 to provide that a person may be arrested and confined in a local jail pending the court martial, that the person is entitled to pretrial release as if charged with a violation of a state criminal law, and that a person who does not obtain release from confinement is to be transferred to the custody of the Wake County Sheriff and confined in the Wake County confinement facility pending trial. Also provides that a person sentenced by a military court to confinement is to be transferred to the Department of Correction.

27. [S.L. 2010-185](#) (S 675): Remuneration for referrals, purchases, or leases leading to Medicaid payments.

Effective for offenses committed on or after December 1, 2010, revises G.S. 108A-63 to create the following two types of Medicaid offenses involving kickbacks, bribes, or rebates. New G.S. 108A-63(g) makes it unlawful to: (1) knowingly and willfully; (2) solicit or receive any remuneration; (3) in return for (a) referring an individual to a person for the furnishing of any item or service for which a Medicaid payment may be made or (b) purchasing, leasing, ordering, or arranging for any good, facility, service, or item for which a Medicaid payment may be made. New G.S. 108A-63(h) makes it unlawful to: (1) knowingly and willfully; (2) offer or pay any remuneration; (3) to induce a person to (a) refer an individual to a person for the furnishing of any item or service for which a Medicaid payment may be made or (b) purchase, lease, order, or arrange for any good, facility, service, or item for which a Medicaid payment may be made. Makes a violation a Class I felony under G.S. 108A-63(c). Creates exceptions in new G.S. 108A-63(i), including for contracts between the state and a public or private agency where part of the agency's responsibility is referral of a person to a provider.

28. [S.L. 2010-169](#) (H 961): Ethics reform and statements of economic interest.

Judges, district attorneys, and clerks of court are judicial officers subject to the portions of G.S. Chapter 138A, the State Ethics Act, requiring the filing of statements of economic interest. For a discussion of the new legislation, see Judicial Authority & Administration, below.

29. [S.L. 2010-174](#) (H 726): Expunction changes; effective date change for sex offender registration.

Makes several, largely technical, changes to North Carolina expunction procedures, reconciling conflicts and fixing technical errors in two expunction bills enacted in 2009, [S.L. 2009-510](#) (S 262) and [S.L. 2009-577](#) (H 1329). The discussion below summarizes H 726 and S.L. 2009-510, which although enacted in 2009 is effective October 1, 2010. For a summary of S.L. 2009-577, which took effect December 1, 2009, see John Rubin, [Expunction Guide: Types, Requirements, and Impact of 2009 Legislation](#), ADMINISTRATION OF JUSTICE BULLETIN No. 2009/10 (UNC School of Government, Dec. 2009).

Effective for expunction petitions filed on or after October 1, 2010, H 726 makes the following changes:

- G.S. 14-50.30 (certain gang offenses), 90-96 (certain drug offenses), and 90-113.14 (certain toxic vapor offenses) are revised to eliminate extraneous language resulting from a drafting oversight in the 2009 expunction bills.
- G.S. 15A-145(a) (convictions for first offenders under a certain age), 15A-145(d1) (certain larceny convictions), 15A-145.1 (certain gang offenses), 15A-145.2 (certain drug offenses), and 15A-145.3 (certain toxic vapor offenses) are revised to require, as part of a petition for expunction, an application for a criminal record check by the North Carolina Department of Justice instead of affidavits by the clerk and law enforcement; the revised statutes also require a search of the confidential record of prior expunctions maintained by the AOC.

- Several statutes are amended to make clear that, on the court’s granting of an expunction petition, the case information is to be expunged from the records of other government agencies, including the Department of Correction, the Division of Motor Vehicles (except as described below), and any other State or local government agencies identified by the petitioner as having records to be expunged.
- G.S. 15A-145(d1) (certain larceny convictions) is amended to clarify that the look-back period is 15 years to obtain an expunction (rather than 10 or 15 years as under the previous version of the statute).

Effective October 1, 2010, S.L. 2009-510, in conjunction with H 726, makes the following changes:

- New G.S. 15A-150 requires that the clerk of court in each county file with the AOC the names of people granted a discharge or expunction and notify other government agencies of the order. The new statute requires such agencies to expunge their records. (New G.S. 15A-151(c) exempts DMV from this requirement if expressly prohibited by the indicated federal laws.) G.S. 15A-150 directs an arresting agency that receives an order to notify the State Bureau of Investigation, which must forward the order to the Federal Bureau of Investigation. It also directs a state agency that receives an expunction order to notify any private entity with which it has a licensing agreement for bulk extracts of data from the agency’s criminal record database, to delete the record in question.
- New G.S. 15A-151 requires the AOC to maintain a confidential file containing the names of the people for whom it has received a notice of expunction under G.S. 15A-150. This file is exempt from the expunction requirement in new G.S. 15A-150. The information in the file may be disclosed only as provided in new G.S. 15A-151: to a judge to ascertain whether a person charged with an offense has previously received a discharge or expunction; to a person requesting confirmation of the person’s own discharge or expunction under new G.S. 15A-152; or to a court in response to a subpoena or court order in a civil action under G.S. 15A-152.
- New G.S. 15A-152 requires private entities that hold themselves out as being in the business of compiling and disseminating criminal history record information to destroy and not disseminate information for which it has received notice to delete the information. The new statute imposes civil liability for a violation by a private entity and allows a person prior to filing suit against a private entity to obtain from the AOC proof that the person was the subject of an expunction order as well as proof that notice was sent to private entities.

With regard to sex offender registration, H 726 modifies the effective date in Section 19 of [S.L. 2006-247](#) (H 1896), which amended G.S. 14-208.6(4)b. to provide that a “reportable conviction” includes “a final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state.” The 2006 legislation made this change applicable to offenses committed and to individuals who move into North Carolina on or after December 1, 2006. H 726 amends the effective-date language to make the change applicable to offenses committed and to individuals who move into North Carolina “prior to,” as well as on

or after, December 1, 2006. H 726 also states, however, that the effective-date change “becomes effective October 1, 2010, and applies to any person required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes, any person serving an active sentence or on supervised probation, parole, or post-release supervision, for any offense, on or after that date, and any person convicted of a felony offense on or after that date.”

Civil Procedure, Estates & Special Proceedings

1. [S.L. 2010-14](#) (S 59): Attorney fees in alimony cases.

Amends G.S. 50-16.4 to address the effects of the North Carolina Supreme Court decision in *Patronelli v. Patronelli*, 360 N.C. 628, 636 S.E.2d 559 (2006). The prior statute provided that attorney fees may be awarded to a dependent spouse in an alimony case “for the benefit of such spouse.” The Supreme Court interpreted this provision to prohibit an award of fees where the dependent spouse received attorney services *pro bono* and therefore would not personally benefit from the award. The amendment removes the reference to the benefit of the spouse.

2. [S.L. 2010-97](#) (S 1242): Enlarging time in partition actions.

Amends G.S. 1-398, which limits enlarging time in special proceedings to 10 days and only once except in specified circumstances, to provide that, for partitions, the time may be enlarged for up to 30 days. Effective July 20, 2010.

3. [S.L. 2010-181](#) (H 620): Repeal of prohibition on drafting attorneys as devisees and requirement that attorney information appear on will.

Repeals two provisions of Chapter 31 that were enacted in 2009 and that became effective January 1, 2010. The first statute, G.S. 31-4.1, provided that a devise or bequest to an attorney who was also the will drafter is void, except where the attorney had certain familial ties to the decedent. The second statute, G.S. 31-4.2, required that a will drafted by an attorney identify the attorney as drafter and include his or her name and business address. Both statutes are repealed effective July 1, 2010. Also provides that an attorney’s failure to comply with the former G.S. 31-4.1 and 31-4.2 does not invalidate a will or codicil.

4. [S.L. 2010-169](#) (H 961): Public records mediation and attorney fees.

As part of a new broad-ranging ethics bill, the General Assembly has enacted G.S. 7A-38.3E, which requires litigants in civil actions brought under Chapter 132 (the Public Records Act) to initiate mandatory mediation within 30 days after the filing of responsive pleadings in the case. The new statute also provides that parties may initiate mediation prior to the filing of a public records lawsuit. Mediation under this statute is governed by the rules that currently apply to mandatory Superior Court mediation under G.S. 7A-38.1, and the Supreme Court may adopt additional rules as needed. Mandatory mediation under this section may be waived if all parties provide a written notice of waiver to the mediator.

This legislation also amends the standard for awarding attorney fees in public records actions. G.S. 132-9 previously required a court to award the “prevailing

party” its attorney fees unless the court found the agency acted with substantial justification in denying access to the records or if an award would otherwise be unjust. The amended statute requires an award to the party who “substantially prevails”, unless the public agency “acted in reasonable reliance” on: (1) a judgment or order of court applicable to that public body; (2) the published opinion of a North Carolina appellate court, an order of the North Carolina Business Court, or a final order of a North Carolina Superior or District Court; or (3) a written opinion, decision, or letter of the Attorney General. A new subsection (e) provides that attorney fees are not permitted against a public hospital created under G.S. Chapter 131E, Article 2, if the court finds the action was brought by or on behalf of a competing health care provider to gain competitive advantage. These changes become effective October 1, 2010. For further explanation of this legislation as it relates to local governments, see blog post by School of Government Professor Frayda Bluestein at <http://sogweb.sog.unc.edu/blogs/localgovt/?p=2884>.

5. **S.L. 2010-164 (S 1015): Prohibit foreclosure rescue scams; Protections in lease option contracts and contract for deed transactions.**

This new Homeowner and Homebuyer Protection Act amends Chapter 75 to provide that foreclosure rescue transactions are illegal where the buyer pays the seller less than 50 percent of the fair market value of the real property. Foreclosure rescue transactions are defined, in short, as agreements in which the owner of a primary residence in default on a mortgage transfers the property to the “rescuer” in exchange for (1) a promise that the foreclosure will be stopped or forestalled; and (2) a lesser interest in the property, such as a tenancy, an option to repurchase the property, or a lease-purchase agreement. Any foreclosure rescue transaction in which the purchaser pays the seller at least 50 percent of the fair market value must be in writing and must set forth specific terms as stated in the act. A violation of this act is an unfair and deceptive trade practice by the meaning of G.S. 75-1.1 and is actionable as such.

The Act also enacts Chapters 47G and 47H, which govern option contracts that are executed in conjunction with residential lease agreements and contracts for deed (installment land contracts). These agreements must be in writing and recorded, contain rights to cancel and other specific disclosures, provide the purchaser an opportunity to cure default, and give the purchaser certain protections in the event the seller defaults on an underlying security agreement. Noncompliance with these provisions is a violation of G.S. 75-1.1, and the purchaser may bring an action to avoid the contract and, where applicable, for damages and other remedies. The Act is effective October 1, 2010, and applies to transactions entered into after that date.

6. **S.L. 2010-126 (S 1176): Construe will and trust clauses relating to federal estate and generation-skipping transfer taxes.**

Creates G.S. 31.46.1 and 36C-1-113 to address the consequences of the expiration of the federal estate tax and generation-skipping transfer tax that occurred on January 1, 2010. The act applies to wills, codicils, and trust instruments executed before December 31, 2009, where the decedent or settlor dies between January 1, 2010 and either January 1, 2011 or the date of reinstatement of the federal taxes, whichever is earlier. If the will or trust instrument contains one of the formulas set forth in

subsection (c) of each new statute, the will or trust instrument is to be construed to refer to the federal tax provisions as they applied prior to the effective date of the repeal. Within twelve months of the testator's or settlor's death, a personal representative, affected beneficiary, or trustee (as applicable) may commence a court proceeding to determine whether the decedent or settlor intended that the relevant references be construed with respect to federal law as it exists after December 31, 2009. Also see **S.L. 2010-181 (H 620)** for changes to the Uniform Principal and Income Act.

7. **S.L. 2010-168 (S 1216): Extension and expansion of emergency foreclosure prevention program.**

Broadens the scope of emergency foreclosure legislation passed in 2008. In 2008 the General Assembly enacted the Emergency Program to Reduce Home Foreclosures Act. That legislation was a response to the rising number of foreclosures on subprime mortgages in North Carolina. Among other changes, the 2008 Act amended Chapter 45 to require mortgage creditors to provide subprime mortgagors with a 45-day pre-foreclosure written notice informing the debtor of certain resources to aid in avoiding foreclosure and to report the notice to the AOC. The Act also mandated a new AOC database developed in coordination with the Commissioner of Banks for use in the newly-established State Home Foreclosure Prevention Project.

The 2010 legislation broadens the applicability of the Act to include not just subprime loans, but all "home loans" (generally, loans to natural persons for personal or family dwellings). It extends the expiration date for these provisions to May 31, 2013. The pre-foreclosure notice requirement will now apply to foreclosure notices filed with respect to home loans on or after November 1, 2010. The 2010 legislation also creates a State Home Foreclosure Prevention Trust Fund to be managed by the Office of the Commissioner of Banks, and to be used to support the work of the State Home Foreclosure Prevention Project as specified in the new provision. Creditors are required to submit a \$75.00 payment to the Trust Fund upon filing the requisite pre-foreclosure notice to the debtor.

8. **S.L. 2010-190 (S 1400): No foreclosures during debtor's active military duty.**

Creates G.S. 45-21.12A, providing that a creditor may not proceed with a foreclosure pursuant to a power of sale against a debtor during or within 90 days after the period of the debtor's active military service. The Clerk of Superior Court may not conduct a foreclosure hearing unless the creditor files a certification that the hearing will not take place during or within 90 days after the debtor's military service. Creditors' foreclosure notices must also include a statement that the foreclosure may be prohibited if the debtor is on military duty. In ordering a foreclosure sale, the Clerk of Court must make a finding that the foreclosure is not barred due to the debtor's military duty. The requirements in this new section apply only to mortgages and deeds of trust that originated before the debtor's period of military service. A foreclosure may proceed if the debtor has executed a written waiver during or after the period of his or her military service in a document separate from the debt instrument. The act is effective January 1, 2011, and applies to foreclosures initiated on or after that date.

Juvenile Law

1. [S.L. 2010-90](#) (S 567). **New Responsible Individuals List procedures.**

In 2005 the General Assembly amended the Juvenile Code to provide for a Responsible Individuals List to include the name of any individual determined by a county department of social services (DSS) to have abused or seriously neglected a child. [S.L. 2005-399] Unlike names on the Central Registry, which for many years has collected information relating to reports of abuse and neglect, names on the Responsible Individual List can be provided to certain agencies, institutions, and facilities that need to determine individuals' fitness to care for children. On March 2, 2010, the North Carolina Court of Appeals held that the procedures for placing names on the Responsible Individual List and expunging names from the list violated the North Carolina Constitution. *In re W.B.M.*, ___ N.C. App. ___, 690 S.E.2d 41 (2010). As a result, placement of names on the list and use of the list were suspended.

S.L. 2010-90 substantially rewrote Article 3A of G.S. Chapter 7B to revise procedures related to the list. The changes became effective July 11, 2010. The primary differences between the former law and current law include the following:

- “Serious neglect” is statutorily defined. Previously the term was defined only in an administrative rule.
- An individual is entitled to judicial review of an agency’s determination that the person is a responsible individual, *i.e.*, has abused or seriously neglected a child, before the individual’s name is placed on the list. The person must be given written notice, a copy of a “petition for judicial review,” and instructions about how to seek judicial review. Previously, judicial review occurred only after the person’s name was placed on the list and after review by the DSS director and, at the option of the individual, the district attorney. The new law includes no role for the district attorney in relation to the list.
- An individual’s name may be placed on the list only after one of the following:
 - i. The person is properly notified and fails to file a timely petition for judicial review.
 - ii. The person files a petition for judicial review and the court determines after a hearing that the person is a responsible individual.
 - iii. DSS alleges in an abuse or neglect petition that the person is a responsible individual, and after a hearing the court determines by a preponderance of the evidence that the person is a responsible individual.
 - iv. The person is criminally convicted as a result of the same incident.

When a county DSS, after an investigative assessment, substantiates abuse or neglect and determines that someone is a responsible individual, DSS files a juvenile petition only if court intervention is necessary to protect the child. If DSS does not file a petition, the court will review the agency’s determination that someone is a responsible individual only if that person files a petition for judicial review. If DSS does file a petition alleging that a child is abused or neglected, in that same petition DSS may allege and seek a determination that a particular respondent abused or seriously neglected the child and therefore is a responsible individual. At the hearing on the petition, if the court adjudicates the child to be abused or neglected, the court

then would proceed to determine whether the named respondent is a responsible individual. The standard of proof for the adjudication is clear and convincing evidence. For determining whether a respondent is a responsible individual, it is a preponderance of the evidence.

2. **S.L. 2010-90 (S 567). Amendments to abuse/neglect/dependency petitions.**

S.L. 2010-90 also rewrote G.S. 7B-800 to allow the court, in its discretion, to permit the amendment of an abuse, neglect, or dependency petition, even if the amendment changes the nature of the condition alleged. Previously, the court could allow an amendment only if it did not change the nature of the conditions on which the petition was based. The act also adds a provision requiring the court, after it allows an amendment, to direct the manner in which the amended petition must be served and to specify the time allowed for a party to prepare after an amendment.

3. **S.L. 2010-116 (H 1463). Confidential intermediaries for adoption information.**

This act rewrites G.S. 48-9-104, effective October 1, 2010, to expand the categories of individuals for whom a county department of social services or a licensed child-placing agency may act as a confidential intermediary without appointment by the court. With the consent of all the relevant parties, an agency acting as a confidential intermediary may obtain and share nonidentifying birth family health information, facilitate contact, or share identifying information.

Previously the law applied only to a biological parent, an adult adoptee, or an “adult lineal descendant” of a deceased adoptee. As rewritten, the law now applies to

- a biological parent
- an adult adoptee
- an adult biological sibling of an adult adoptee
- an adult biological half sibling of an adult adoptee
- an adult family member of a deceased biological parent
- an adult family member of a deceased adoptee

A “family member” is a spouse, child, stepchild, parent, stepparent, grandparent, or grandchild.

4. **S.L. 2010-94 (H 1403). DNA sample from juvenile whose case is transferred.**

Section 13 of the act rewrites G.S. 7B-2201, effective February 1, 2011, to require that a DNA sample be taken from a juvenile whose case is transferred to superior court if an offense for which the juvenile is transferred is included in G.S. 15A-266.3A, a new section that also becomes effective February 1, 2011. Otherwise, the act relates to adult offenders.

Motor Vehicle Law

1. **S.L. 2010-97 (S 1242): DWI parole; Vehicle registration.**

Amends G.S. 20-179(p)(3) to permit a parole-eligible defendant convicted of impaired driving who has served the mandatory minimum period of imprisonment and who has obtained a substance abuse assessment to be paroled into a residential treatment program. Formerly, such defendants had to complete any recommended treatment or training program in order to be paroled. Amends G.S. 20-183.4C to permit a vehicle to be registered for up to ten days before receiving a passing inspection. Permits DMV to issue a ten day (was, three day) trip permit authorizing a person to drive a vehicle whose inspection or registration has expired. Removes restriction that allowed such vehicles to be driven only to an inspection station, repair shop or DMV or tag agent office. Effective upon enactment (July 20, 2010).

2. **S.L. 2010-129 (S 1214): Amends State law to conform with Federal Motor Carrier Enforcement Regulations; Amends statutes governing seizure and registration of property-hauling vehicles.**

Enacts new G.S. 20-4.01(12c), (12d) and (12e) defining the terms “Gross Combination Weight Rating,” “Gross Vehicle Weight,” and “Gross Combined Weight.” Effective upon enactment (July 21, 2010).

Amends definition of “intrastate motor carrier” in G.S. 20-376(5), effective October 1, 2010 for offenses committed on or after that date, to incorporate newly defined terms.

Amends G.S. 20-118(c) to require that a property-hauling vehicle be registered for the maximum weight allowed for its configuration in addition to meeting other requirements in order to be exempt from statutory weight limits. Effective October 1, 2010.

Amends G.S. 20-96 to provide that a law enforcement officer’s authority to seize a property-hauling vehicle with an overload is not affected by the statute of limitations set forth in Chapter 1 of the General Statutes. Effective upon enactment.

Amends G.S. 20-196.4 to annually appropriate fees imposed for a law enforcement escort for the transport of any oversized load or hazardous shipment to DOT. Effective upon enactment.

Amends G.S. 1-52 to establish a three-year statute of limitations for actions related to civil penalties, civil assessments, or civil fines imposed under Chapter 20. Effective upon enactment.

3. **S.L. 2010-130 (S 655): Increases fee for restoration of driver’s licenses revoked for impaired driving.**

Amends G.S. 20-7(i1) to increase driver’s license restoration fee from \$75 to \$100 for persons whose driver’s licenses were revoked for impaired driving or for commercial impaired driving based on an alcohol concentration of 0.06 or higher. Additional \$25 must be transferred to the Forensic Tests for Alcohol Branch of DHHS to fund a statewide chemical alcohol testing program. Effective September 1, 2010.

4. **S.L. 2010-131 (S 181): Eight-year driver's license for anyone less than 66 years old.**

Amends G.S. 20-7(f)(2) to increase the duration of original and renewed licenses for persons less than 66 years old (was, 54 years old) to eight years. Effective January 1, 2011 for any driver's license issued on or after that date.

5. **S.L. 2010-132 (H 1729): Various changes to motor vehicle laws.**

Amends G.S. 20-7(f)(2) to provide that a commercial drivers license (other than a license with a P or S endorsement) expires on the birthday of the licensee in the fifth year after issuance. Amends G.S. 20-7(2a) to provide that a renewed commercial driver's license expires five years after the expiration date of the license that was renewed.

Amendments to G.S. 20-63(g) make it an infraction punishable by a penalty of not more than \$100 to cover any registration plate with a frame or transparent clear or color-tinted cover that makes a number or letter, the State name, or a number or month on the registration renewal sticker illegible. Previously, it was an infraction for the operator of a motor vehicle to "cover[] the State name, year sticker, or month sticker on a registration plate with a license plate frame."

Amends G.S. 20-79(b) to increase the number of dealer license plates available to motor vehicle dealers. Amends G.S. 20-79(e) to increase the penalties imposed upon drivers and dealers for driving in violation of dealer license plate restrictions.

Amends G.S. 20-79.2 to impose new requirements governing issuance of a transporter plate, including that such plates only may be obtained by a business, a dealer, or a county (formerly, could be obtained by a person) and that a business or dealer that receives a transporter plate must have proof of financial responsibility. Generally, the amendments restrict eligibility for and operation such plates. As an example, transporter plates previously were authorized for use in repossessing a motor vehicle; now only financial institutions with a recorded lien on a motor vehicle may obtain a transporter plate for purposes of repossessing a motor vehicle. Also amends enumerated purposes for which transporter plates may be used and requires DMV to rescind a transporter plate displayed on a motor vehicle driven for an unauthorized purpose.

Amendments to G.S. 20-79.7(a) clarify that DMV is to provide annually at no charge a single Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War registration plate to eligible persons. Provides that such plates are subject to the regular motor vehicle registration fees if the registered weight of the vehicle is more than 6,000 pounds.

Amends G.S. 20-85.1 to remove \$1.00 postage and handling fee added to vehicle registrations renewed by mail.

Amends G.S. 20-88.02 to require DMV to register trucks and tractor trucks used exclusively in connection with logging operations as provided by federal law for collection of the federal heavy vehicle use tax.

Amendments to G.S. 20-188(c) expand exceptions from light-traffic road limitations and exempt from certain weight limitations vehicles hauling animal waste products from the animal waste storage site to a farm or field, providing other conditions are met.

Amendments to G.S. 20-130.1 permit use of rear-facing red lights on “Incident Management Assistance Patrol” vehicles operated by DOT while stopped to provide assistance or incident management.

Expands definition of “public service vehicle” in G.S. 20-157(f) (the Move Over law) to include vehicles used to restore electric utility service due to an unplanned events.

The act amends G.S. 20-161(a), which previously prohibited parking or leaving a vehicle on the paved or main-traveled portion of a highway or highway bridge outside municipal corporate limits unless the vehicle was disabled to the extent that stopping could not be avoided or the vehicle had to be temporarily left. The act separates the prohibition in two subsections, both of which apply in municipalities as well as unincorporated areas. The first, subsection (a), prohibits stopping or leaving a vehicle on the main-traveled portion of any highway or highway bridge with a posted speed limit of less than 45 miles per hour unless the vehicle is disabled to the extent noted above. The references to the paved portion of the highway are removed from this subsection, as is the requirement that the highway or bridge be outside a municipality. New subsection (a1) prohibits parking or leaving a vehicle on the paved or main-traveled portion of a highway or highway bridge with a posted speed limit of 45 miles per hour or more unless the vehicle is disabled. Again the reference to municipal limits is deleted, though in this subsection, the paved portion of the road, in addition to the main-traveled portion, is included. Both G.S. 20-161(a) and (a1) except solid waste vehicles stopped to collect garbage or recyclable material from their requirements.

Amendments to G.S. 20-294(2) permit DMV to deny, suspend, or revoke a driver’s license for willful and intention failure to comply with the provisions of G.S. 20-79.2 governing transporter plates.

Amends G.S. 160A-300.1(c1), G.S. 160A-300.2(e) and G.S. 160A-300.3(e)—(the latter two provisions as enacted by Section 3 of S.L. 2001-286)—to require that yellow light change intervals at intersections where red light cameras are used be no less than the yellow light change interval specified on the traffic signal plan of record and that the interval comply with the Manual on Uniform Traffic Control Devices (formerly required that interval be no less than that specified in Design Manual developed by Signals and Geometrics Section of DOT).

Expands definition of abandoned motor vehicle in G.S. 160A-303(b1)(4) to include a motor vehicle left on any public street or highway that law enforcement determines to be a hazard to the motoring public; cities may thus tow such motor vehicles pursuant to an ordinance prohibiting the abandonment of motor vehicles on the public streets. All of the above provisions are effective upon enactment.

Amends Section 25.10 of SL 2009-451 as enacted by Section 20 of SL 2009-575, which required DMV to move the emissions program call center to North Carolina, to require that DMV move the entire inspection program call center to the state. Effective December 1, 2010 and applicable to offenses committed on or after that date.

6. **S.L. 2010-134 (S 1136): Strengthens regulation of vehicle towing from private lots.**

Amends G.S. 20-219.2, which governs the towing of vehicles from private lots in enumerated cities and counties, and expands coverage to Cumberland and Mecklenburg Counties and municipalities located within those counties. Clarifies that requirement to mark individual spaces in a parking lot with the name of the lessee or owner applies only when spaces are individually owned and leased. Requires that sign posted in lot display the name and phone number of the towing and storage company. Requires that vehicle towed pursuant to these provisions be stored within 15 miles of the parking lot (if there is a place of storage within 15 miles) and prohibits transporting a vehicle more than 25 miles for storage. Requires person who tows or stores a vehicle to inform the owner in writing when the vehicle is retrieved that the owner has the right to pay the amount of the lien asserted, request immediate possession, and contest the lien pursuant to the provisions of G.S. 44A-4. Bars a person who tows or stores vehicle from requiring a person retrieving a vehicle to sign a waiver to secure the vehicle's release. Makes a violation an infraction (was a Class 3 misdemeanor) punishable by a fine of not more than \$100 (was, \$10). New G.S. 20-219.2(d) provides that the statute does not preempt the authority of any county or city to enact ordinances regulating towing from private lots as authorized by general law. Given that local ordinances may not regulate a field for which a statute clearly shows a legislative intent to provide a complete and integrated scheme to the seclusion of local regulation, new subsection (d) supports an argument that the towing regulations set forth in G.S. 20-219.2 are not the sort of a complete and integrated scheme that prevents regulation by local ordinance. Effective October 1, 2010 for vehicles towed on or after that date.

7. **S.L. 2010-146 (H 617): ATV use by disabled sportsmen to cross public roadways.**

Enacts new G.S. 20-171.26 permitting persons qualified under Disabled Sportsmen Program (set forth in G.S. 113-296) to cross public roadways using an all-terrain vehicle (ATV) while engaging in licensed hunting or fishing activities. Driver must carry evidence of membership in Disabled Sportsmen Program and the appropriate license to engage in the hunting or fishing activity. Requires that ATVs used in this manner be equipped with operable front and rear lights and a horn. Requires operator to observe posted speed limit and not to exceed the manufacturer's recommended speed for the vehicle. Effective upon enactment (July 22, 2010).

Judicial Authority & Administration

1. S.L. 2010-31 (S 897): 2010 Budget Bill.

Reduces fiscal year 2010-11 appropriations to the Judicial Department; increases some court fees; alters some AOC responsibilities; and allows some larger counties and cities to supplement court personnel salaries.

The total reductions in appropriations equal \$7.5 million and include:

- Elimination of 18.75 vacant positions in AOC central office (\$1.1 million).
- Elimination of 39 vacant positions statewide (\$1.8 million).
- Reduction in operating budgets to actual 2008-09 level (\$1.2 million).
- Reduction of technology services by eight percent (\$2.6 million).
- Establishment of a “management flexibility reserve” requiring the AOC to determine where to reduce another \$3.3 million.

The fee increases, effective October 1, 2010, unless otherwise specified, include:

- General Court of Justice support fee in criminal cases, from \$95.50 to \$100.50. [*Note:* S.L. 2010-123 (S 1202), the budget technical corrections bill, clarifies in § 6.1 that this fee increase applies to fees assessed or collected after October 1, 2010, but does not apply to fees in waiveable misdemeanor or infraction traffic or other cases in which the defendant was not required to appear in court and the citation or other process was issued before October 1.]
- Penalty for defendant who fails to pay fine, penalty or costs within 20 days, from \$25 to \$50. [*Note:* S.L. 2010-123 (S 1202), the budget technical corrections bill, clarifies in § 6.1 that this fee increase applies to fees assessed or collected after October 1, 2010, but does not apply to fees in waiveable misdemeanor or infraction traffic or other cases in which the defendant was not required to appear in court and the citation or other process was issued before October 1.]
- General Court of Justice support fee in civil cases, from \$93 to \$125 in superior court and from \$73 to \$80 in district court.
- Filing fee for affidavits, etc., in IV-D paternity and support cases, from \$4 to \$6 (by amending G.S. 110-134 to reference G.S. 7A-308(a)(18)) (this change appears to be effective July 1, 2010).
- New \$10 court support fee for resumption of maiden name or premarriage surname.
- Appointment fee for indigent counsel at trial level, from \$50 to \$60, with the additional \$10 to go to Indigent Persons’ Attorney Fee Fund.

The act also:

- Allows the balance in the Collection of Worthless Check Fund at the end of the 2009-10 fiscal year to be used for office or information technology equipment rather than being dedicated to worthless check collection programs;
- Authorizes the Office of Indigent Services to spend up to \$1 million for 12 new lawyers and six support positions;
- Adjusts funding for death penalty litigation;

- Requires the AOC to establish rules for fees for court and prosecutorial experts;
- Requires the AOC to set uniform statewide policies for appointment and payment of deaf and hearing-impaired interpreters;
- Provides that costs do not apply to counterclaims in domestic violence cases that are limited to relief authorized by Chapter 50B; and
- Establishes a two-year pilot program in Alamance County for electronic filing in domestic violence cases.

Finally, and significantly, the budget act adds a new G.S. 7A-300.1 allowing counties and cities with more than 300,000 population to contract with the AOC to supplement salaries of court personnel other than elected officials and magistrates. The counties to whom the section will apply are Mecklenburg, Wake, Guilford, Forsyth and Cumberland. The only cities that will be allowed to supplement salaries are Charlotte and Raleigh.

2. **S.L. 2010-49 (H 1307): Constitutional amendment that convicted felon cannot be sheriff.**

Places on the November 2010 general election ballot a proposed constitutional amendment prohibiting a convicted felon from being eligible to serve as a sheriff even if the person's citizenship rights have been restored. If approved by the voters, the amendment would take effect with the certification of the referendum returns.

3. **S.L. 2010-96 (S 1165): District court supervision of therapeutic court probationers.**

The 2009 legislature amended G.S. 7A-271 and -272 and G.S. 15A-1344 to provide legal authority for the practice of district court judges supervising, modifying and revoking probation for defendants placed in drug court treatment program in superior court. A glitch in the 2009 legislation made it unclear whether such authority extended to defendants placed in therapeutic court programs in superior court. The technical corrections bill, in § 26, clarifies that the authority does extend to therapeutic court programs.

4. **S.L. 2010-105 (H 1398): Chief justice chooses senior resident superior court judge.**

Rewrites G.S. 7A-41.1(b) to provide that the chief justice chooses the senior resident superior court judge in districts with more than one resident judge, rather than most senior judge automatically getting the position. The revision directs the chief justice to consider experience and management competence and to consult with other court officials and the local bar. The act takes effect October 1, 2010, and provides that current senior resident judges retain that position until they vacate the seat.

5. **S.L. 2010-123 (S 1202): AOC authority to reduce positions.**

The act making technical corrections to the 2010 budget bill includes in § 6.4 the authorization for the AOC to reduce statutorily prescribed Judicial Department positions — assistant DAs, clerks, etc. — during the 2009-11 biennium to comply with legislative actions taken in the budget process. The provision allows the AOC to

reduce statutorily required positions, if necessary, to satisfy the “management flexibility reserve” of \$3.3 million in reductions in the 2010-11 fiscal year, and it gives retroactive approval to reductions in positions in the 2009-10 year.

6. **S.L. 2010-147 (H 1973): Fee to support SBI DNA lab.**

This act deals generally with economic incentives, but § 7.1 includes an amendment to G.S. 7A-304(a) to add a \$2 fee in felony and misdemeanor cases to support the SBI’s DNA database and databank. The new fee applies to costs assessed on or after October 1, 2010, but does not apply to waiveable misdemeanor traffic or other cases in which the defendant was not required to appear in court and the citation or other process was issued before October 1, 2010.

7. **S.L. 2010-152 (S 900): Study of comparative negligence.**

Included in the 2010 Studies Act is the authorization for the creation of a joint select committee to study the adoption of comparative negligence and the abrogation of joint and several liability. The committee, if established, would have five members from each house and would report by the start of the 2011 session. See the Criminal Law & Procedure section above for other studies included in the act.

8. **S.L. 2010-169 (H 961): Ethics reform and statements of economic interest.**

Judges, district attorneys and clerks of court are judicial officers subject to the portions of G.S. Chapter 138A, the State Ethics Act, requiring the filing of statements of economic interest. The new legislation amends those reporting requirements to add additional business dealings and campaign contributions to the information that must be reported and to also require the filing of a report in the year after the official resigns or does not run for reelection. The legislation also includes provisions on mediation of public records disputes, discussed above in the Civil Procedure section. There are various other provisions about lobbyists, gifts, higher ethical standards for state boards, etc., that are not of as much direct interest to court officials.

9. **S.L. 2010-193 (H 1412): National Guard courts-martial law revision.**

This act revises the portions of Chapter 127A of the General Statutes concerning courts-martial for the National Guard. Many of the changes affect only the procedure within the National Guard. Those revisions include such matters as providing that the courts-martial procedures are to conform to the Uniform Code of Military Justice and Manual for Courts-Martial, including the punishments that may be imposed; specifying what rank officer is required to appoint a special or summary court-martial; prohibiting confinement as a punishment for a general court-martial unless the court consists of a military judge and at least five members (but allowing the defendant to waive this requirement); limiting confinement for a general court-martial to a maximum of one year; prohibiting confinement for a special court-martial unless heard by a military judge and at last three members; limiting confinement for a special court-martial to six months; prohibiting confinement as a punishment for a summary court-martial; and removing the requirement that a military judge be licensed as a lawyer in North Carolina, providing instead that the judge must be

certified by the judge advocate general of the Army, Navy, Air Force, Marines or Coast Guard.

The act provides for arrest and pretrial confinement in a local jail, with the defendant entitled to bail the same as if charged with a state crime. A defendant who is not released on bail is to be transferred to the Wake County jail, with the costs paid by the Department of Crime Control and Public Safety. Likewise, the department pays costs for state and local officers' services of warrants, etc. A defendant sentenced by a military court to confinement is to be transferred to the Department of Correction.

The AOC is to include courts-martial data in its criminal history database when it next rewrites its clerks system.

The act adds a new appeal from a court-martial judgment to Wake County Superior Court. The appeal must be filed within ten days of approval of the sentence by the governor. Grounds for appeal are legal error, that the verdict is contrary to weight of the evidence, or that the defendant otherwise did not receive a fair and impartial trial. The appeal is to be heard by a judge assigned by the chief justice. The staff judge advocate of the National Guard is to designate judge advocates to prosecute and defend.

The act also adds a new G.S. 7A-31.1 providing for discretionary review from the Wake County decision in the Court of Appeals. Review is to be allowed if the appeal has significant public interest, involves legal principles of major significance, or appears to be in conflict with a decision of the US Court of Appeals for the Armed Forces. There is no appeal beyond the Court of Appeals.

The act takes effect December 1, 2010, and applies to offenses committed from that date.