

# New Criminal Legislation

Jessica Smith

October 2008



UNC  
SCHOOL OF GOVERNMENT

[www.sog.unc.edu](http://www.sog.unc.edu)

# Sex Offenders

# Sex Offenders

Chapter on Criminal Legislation in: NC  
Legislation

On-line under Publications on SOG web site:  
[sog.unc.edu](http://sog.unc.edu)

# Sex Offenders

Jessica's Law

SL 2008-117

Page 5

# Sex Offenders

- New statutory rape & sex offense crimes

# Sex Offenders

- New statutory rape & sex offense crimes
  - Apply when:
    - Victim < 13
    - D = 18 or older

# Sex Offenders

- New statutory rape & sex offense crimes
  - Apply when:
    - Victim < 13
    - D = 18 or older
  - B1 felonies BUT . . .

# Sex Offenders

- New statutory rape & sex offense crimes
  - Punishment
    - Mandatory minimum of 300 months



## PRIOR RECORD LEVEL

|           | I<br>0 Pts                          | II<br>1-4 Pts | III<br>5-8 Pts | IV<br>9-14 Pts | V<br>15-18 Pts                  | VI<br>19+ Pts                   |
|-----------|-------------------------------------|---------------|----------------|----------------|---------------------------------|---------------------------------|
| <b>A</b>  | <b>Death or Life Without Parole</b> |               |                |                |                                 |                                 |
| <b>B1</b> | A<br>240-360                        | A<br>288-360  | A<br>336-420   | A<br>384-480   | A<br><i>Life Without Parole</i> | A<br><i>Life Without Parole</i> |
|           | 192-240                             | 250-288       | 260-336        | 307-384        | 346-433                         | 384-450                         |
|           | 144-192                             | 173-230       | 202-260        | 230-307        | 260-346                         | 288-384                         |
| <b>B2</b> | A<br>137-196                        | A<br>189-237  | A<br>220-276   | A<br>251-313   | A<br>282-338                    | A<br>313-392                    |
|           | 125-157                             | 151-189       | 176-220        | 201-251        | 225-282                         | 251-313                         |
|           | 94-123                              | 114-151       | 132-176        | 151-201        | 169-225                         | 188-251                         |
| <b>C</b>  | A<br>73-92                          | A<br>100-125  | A<br>116-143   | A<br>133-167   | A<br>151-188                    | A<br>168-210                    |
|           | 58-73                               | 80-100        | 93-116         | 107-133        | 121-151                         | 135-168                         |
|           | 44-58                               | 60-80         | 70-93          | 80-107         | 90-121                          | 101-135                         |
| <b>D</b>  | A<br>64-80                          | A<br>77-93    | A<br>103-129   | A<br>117-146   | A<br>133-167                    | A<br>146-189                    |
|           | 51-64                               | 61-77         | 82-103         | 94-117         | 107-133                         | 117-146                         |
|           | 42-51                               | 46-61         | 61-82          | 71-94          | 80-107                          | 88-117                          |

# Sex Offenders

- New statutory rape & sex offense crimes
  - Punishment
    - Mandatory minimum of 300 months
    - Trigger sex offender registration

# Sex Offenders

- New statutory rape & sex offense crimes
  - Punishment
    - Mandatory minimum of 300 months
    - Trigger sex offender registration
    - Lifetime satellite monitoring

# Sex Offenders

- New statutory rape & sex offense crimes
  - Punishment
    - Mandatory minimum of 300 months
    - Trigger sex offender registration
    - Lifetime satellite monitoring
    - If judge finds egregious aggravation, judge may increase sentence up to life in prison

# Sex Offenders

- New statutory rape & sex offense crimes
  - Punishment
    - Mandatory minimum of 300 months
    - Lifetime satellite monitoring
    - If judge finds egregious aggravation, judge may increase sentence up to life in prison

**UNCONSTITUTIONAL!**

Your honor, we'd now like to submit evidence of egregious aggravation to you, as per the 2008 statute.



Counselor, have you heard of  
Blakely? That statutory  
procedure is unconstitutional!



Your honor, we'd now like to submit evidence of egregious aggravation to you, as per the 2008 statute.



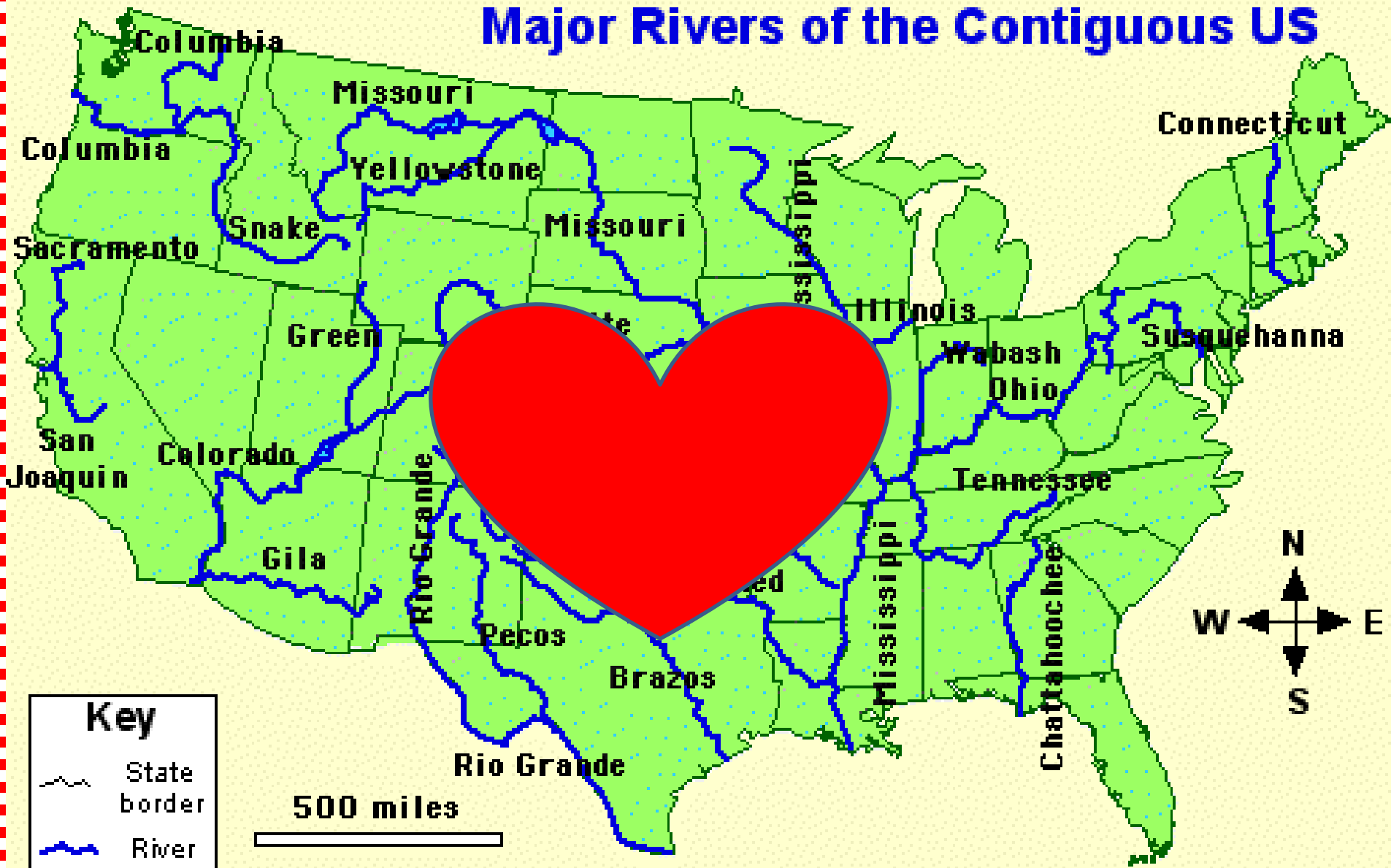




# Sex Offenders

- New statutory rape & sex offense crimes
  - Punishment
    - If judge finds egregious aggravation, judge may increase sentence up to life in prison
      - Unconstitutional under Blakely
      - **What the heck is egregious aggravation anyway???????**

# Major Rivers of the Contiguous US



©EnchantedLearning.com

# Sex Offenders

- New statutory rape & sex offense crimes
  - Punishment
    - If judge finds egregious aggravation, judge may increase sentence up to life in prison
      - Unconstitutional under Blakely
      - **What the heck is egregious aggravation anyway??????**

# Sex Offenders

- New statutory rape & sex offense crimes
  - Loss of rights

# Sex Offenders

- 30-year registration

# Sex Offenders

- 3-day time limit on changes in status

# Sex Offenders

- New H felony for sex offender to be present on locations used by minors



# Sex Offenders

(1) required to register as sex offender for a  
“covered crime”\*

\*rape, sex offense, sexual battery, & any  
offense where  $V < 16$

# Sex Offenders

- (1) required to register as sex offender for a covered crime
- (2) knowingly

# Sex Offenders

- (1) required to register as sex offender for a covered crime
- (2) knowingly
- (3) “be” at any of the following:
  - (a) at place intended primarily for use/care/supervision of minors

# Sex Offenders

- (1) required to register as sex offender for a covered crime
- (2) knowingly
- (3) “be” at any of the following:
  - (a) at place intended primarily for use/care/supervision of minors
  - (b) within 300 feet of such a place when located on premises not intended primarily for this purpose



# Sex Offenders

- (1) required to register as sex offender for a covered crime
- (2) knowingly
- (3) “be” at any of the following:
  - (a) at place intended primarily for use/care/supervision of minors
  - (b) within 300 feet of such a place when located on premises not intended primarily for this purpose or
  - (c) where minors gather for regularly scheduled programs









# Sex Offenders

- New crime for sex offender to be present in location used by minors
  - Undefined terms

# Sex Offenders

- New crime for sex offender to be present in location used by minors
  - Undefined terms
  - Limited exceptions

# Sex Offenders

- Release on probation & post-release supervision violations

# Sex Offenders

- Sexual exploitation of a minor  
(SL 2008-218 page 10)
  - Broader coverage
  - Increases punishment

# Sex Offenders

- Solicitation of a Child by Computer to Commit an Unlawful Act
  - G felony if D or any other person for whom D was arranging the meeting appears

# Sex Offenders

- New felony for use of certain websites

# Sex Offenders

- New felony for use of certain websites
  - (1) a registered as a sex offender
  - (2) accesses commercial social networking Web site
  - (3) knowing that the site permits minor children to be members or to create/maintain a web page on the site



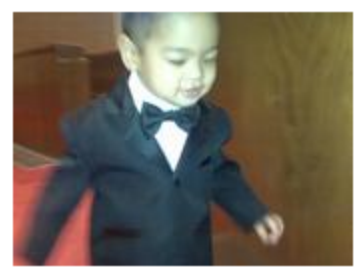
Sponsored Links

Four sponsored links: Contractor Continuing Ed, Field Service Software, Miele Laboratory News, and NYU Occupational Therapy.

myspace.com a place for friends. User Shortcuts: [dropdown] Search [input] People [dropdown] Search [button] POWERED BY Google

Home Mail Profile Friends Music Videos More My Account Sign Out

MARIANINA



""Never save anything for a special occasion, everyday is a special occasion!""

Female  
17 years old  
California  
United States

Online Now!

Last Login:  
10/15/2008

Mood: excited

Contacting MARIANINA

- Send Message, Forward to Friend, Add to Friends, Add to Favorites, IM / Call, Block User, Add to Group, Rank User

MARIANINA has bun #2 in the oven!



Unlimited Streaming. The all new MySpace Music » learn more



This profile is set to private. This user must add you as a friend to see his/her profile.

### no big deal ;; christiine



".. do you think i give a flying tuck?!? .."

Female  
16 years old  
Utah  
United States

Last Login:  
10/14/2008

no big deal ;; christiine If you were a new hamburger at McDonalds, you would be McGorgeous.



OLIVER STONE is on myspace

► Add him now



**Read How I Lost 44lbs FAST!**  
I Struggled with My Weight for YEARS!  
Read How in 10 Short Weeks  
I Lost 44lbs With NO Dieting! -Sara



myspace.com  
a place for friends

User Shortcuts:

People

Search

POWERED BY  
Google

Home Mail Profile Friends Music Videos More

My Account Sign Out

### I'm Da Bomb Lik ATick Tick



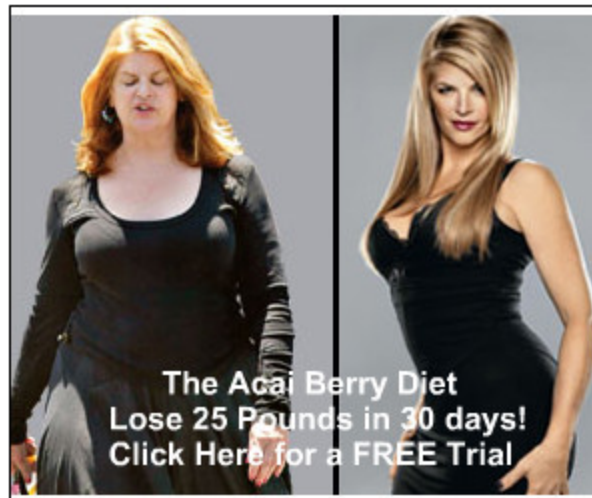
"♥U Kno U Luv Me  
Lik Fat Kidd Luv  
Cake If Not U Just  
Mad Lik A Spoiled  
Kidd Cant Get Wat  
Dey Want Ya  
Digg!!!!♥"

Female  
16 years old  
RALEIGH, North  
Carolina  
United States

Last Login:  
8/12/2008

**I'm Da Bomb Lik ATick Tick is in your extended network**

- Contacting I'm Da Bomb Lik ATick Tick**
- Send Message
  - Forward to Friend
  - Add to Friends
  - Add to Favorites
  - IM / Call
  - Block User
  - Add to Group
  - Rank User



**The Acai Berry Diet**  
Lose 25 Pounds in 30 days!  
Click Here for a FREE Trial



**This profile is set to private. This user must add you as a friend to see his/her profile.**

**I lost 24 pounds fast!**  
I was bloated and felt really disgusting.  
Now things are great, you should check this out



**sexy**



"KEKE SO FREAKIN hot"

Female  
17 years old  
DURHAM, North Carolina  
United States

Last Login:  
7/3/2008

Mood: amorous 😊

Contacting sexy

- Send Message
- Forward to Friend
- Add to Friends
- Add to Favorites
- IM / Call
- Block User
- Add to Group
- Rank User

**sexy is in your extended network**

myspacetv

**THE HOTTEST THING**

Watch now!

**This profile is set to private. This user must add you as a friend to see his/her profile.**

# Sex Offenders

- New felony for use of certain websites
  - Exceptions

# Sex Offenders

- New felony for use of certain websites

-“Access”

# Sex Offenders

- Ban on name changes by sex offenders

# Sex Offenders

- Additional crimes trigger registration  
(SL 2008-220 page 10)



# Sex Offenders

- Additional crimes trigger registration
  - Child Abuse-Prostitution

# Sex Offenders

- Additional crimes trigger registration
  - Child Abuse-Prostitution
  - Child Abuse-Sexual Act

# Sex Offenders

- Additional reporting
  - Online identifier e.g. email address, chat name, IM screen name

# Sex Offenders

- Just a warm up for 2009!

# Gangs (SL 2008-214 pg. 9)

# Gangs

- New crimes
- Forfeiture
- Pretrial release

# Gangs

- New crime: Street gang activity  
Punishment: H felony

# Gangs

## Elements

- (1) employed by/associated w/a “criminal street gang” &
- (2) (a) conducts/participates in a “pattern of criminal street gang activity” *or*  
(b) acquires/maintains an interest in/control of any real/personal property through a “pattern of criminal street gang activity.”



# Gangs

“Criminal street gang:”

Ongoing group of 3 or more people that

- (1) One of its primary activities is the commission of felonies;
- (2) 3 or more members are or have been engaged in criminal street gang activity; &
- (3) may have a common name, common identifying sign or symbol

# Gangs

“Criminal street gang activity:”

- To commit, attempt to commit, or solicit, coerce, or intimidate another person to commit an act

- With the specific intent that such act be committed for the purpose, or in furtherance, of the person's involvement in a criminal street gang.

# Gangs

“Pattern of criminal street gang activity:”

- Engaging in & having a conviction for at least 2 prior incidents of related criminal street gang activity
- Priors have to fall within statutory time limits

# Gangs

## Street Gang Activity -- Elements (again)

- (1) employed by/associated w/a “criminal street gang” &
- (2) (a) conducts/participates in a “pattern of criminal street gang activity” *or*  
(b) acquires/maintains an interest in/control of any real/personal property through a “pattern of criminal street gang activity.”

# Gangs

## Organizer -- Street Gang Activity (F felony)

- (1) organizer, supervisor, manager of street gang activity
- (2) conducts or participates in a pattern of criminal street gang activity

# Gangs

- Other felonies:
  - Soliciting, coercing, etc a person to engage in street gang activity (H felony)

# Gangs

- Other felonies:
  - Soliciting, coercing, etc a person to engage in street gang activity (H felony)
  - If person < 16, it's an F felony

# Gangs

- Other felonies:
  - Threaten to injure someone/damage their property to deter withdrawal from a gang (H felony)
  - Do the same to punish or retaliate for withdrawal from a gang (H felony)



# Gangs

- Other felonies:
  - Discharging a firearm as part of a pattern of street gang activity (E felony)

# Gangs

- Other ramifications:
  - “1 level higher” punishment enhancement for misds. done in connection w/street gang
  - Seizure & forfeiture of property
  - Real property: public nuisance/abatement
  - Judge must indicate on judgment whether crime related to “street gang activity” (new 14-50.25)

# Gangs

- Other ramifications:
  - Pretrial release – rebuttable presumption of no release

# Gangs

- Other twists:
  - Provision for conditional discharge for first offenders under 18
  - Provision for expunction for offenders under 18
  - New gang crimes don't apply to juveniles under 16

# Gangs

- Other Action
  - 60-month firearm enhancement now applies to deadly weapons as well

# Probation Violations

## SL 2008-129 (pg. 6)

- New aggravating factor

# Probation Violations

## SL 2008-129 (pg. 6)

- Extending, Modifying, Revoking after Period of Probation
  - (1) Before the expiration of the prob. period  
State filed a written violation report
  - (2) Court finds that violation occurred before  
probation expired
  - (3) Court finds good cause that probation should  
be extended, modified, or revoked AND
  - (4) If court extends probation, must stick to the  
maximum allowed under G.S. 15A-1342(a).

# Domestic Violence



# Domestic Violence

- Stalking SL 2008-167 (page 7)

# Domestic Violence

- (1) Willfully
- (2) Without legal purpose
  - (a) Harasses a person on more than occasion, or
  - (b) Engages in a course of conduct directed at a person
- (3) Knowing that the harassment/conduct would cause
- (4) A reasonable person to
  - (a) Fear for their safety, the safety of their immediate family, or close personal associates, or
  - (b) Suffer substantial emotional distress by putting the person in fear of death, bodily injury, or continued harassment.

# Domestic Violence

- Repeat Violation of Domestic Violence Protective Order  
SL 2008-93 (page 5)

# Child Abuse: SL 2008-191 (pg. 8)

- 3 categories of physical child abuse:
  - Misd. child abuse inflicting physical injury
  - Felony child abuse inflicting serious injury
  - Felony child abuse inflicting serious bodily injury

# Child Abuse

- 3 categories of physical child abuse:
  - Misd. child abuse inflicting physical injury  
**Elevated from Class 1 to A1 misd.**
  - Felony child abuse inflicting serious injury
  - Felony child abuse inflicting serious bodily injury

# Child Abuse

- 3 categories of physical child abuse:
  - Misd. child abuse inflicting physical injury
  - Felony child abuse inflicting serious injury
    - New H felony if willful act or grossly negligent omission shows a reckless disregard for human life & results in serious physical injury.
  - Felony child abuse inflicting serious bodily injury

# Child Abuse

- 3 categories of physical child abuse:
  - Misd. child abuse inflicting physical injury
  - Felony child abuse inflicting serious injury
  - Felony child abuse inflicting serious bodily injury

New E felony if willful act or grossly negligent omission shows a reckless disregard for human life and results in serious bodily injury.

# Hate Crimes (SL 2008-197 pg. 8)

- Cross burning crime
  - Now covers public property
  - Increases punishment from Class I to H felony



# Hate Crimes

- Placing exhibit to intimidate etc.; doing such an act while wearing hood, mask etc.
  - Exhibit includes noose
  - Increases punishment from Class I to H felony

# Hate Crimes

- Committing a misd. because of prejudice

# Property

- Vandalism over \$5,000 a felony  
SL 2008-15 page 4

# Property

- Theft of fixtures (SL 2008-128 pg. 6)

# Computer Crimes

- Internet sales of tickets above face value  
SL 2008-158 (pg. 7)



Buy & Sell Concert Tickets, Sports Tickets and Broadway Tickets at StubHub!

[Register](#) | [Login](#) | [My Account](#) | [Buy](#) | [Sell](#) | [Help](#)

1.866.STUBHUB

Search

Find

### Refine Results

#### Date Range

- October, 2008
- November, 2008

#### Select specific dates

Oct 15 2008

Oct 22 2008

Find

Results for stubhub.com > "unc football"

### Event Search Results

Showing 1 - 3 of 3

| Event   | Date                               | Location                         | Price Range  |
|---|------------------------------------|----------------------------------|--------------|
| <a href="#">Boston College at North Carolina Football Tickets 10/25</a>       | 10/25/2008<br>Saturday<br>12:00 PM | Kenan Stadium in Chapel Hill, NC | \$25 - \$250 |
| <a href="#">Georgia Tech at North Carolina Football Tickets 11/8</a>          | 11/8/2008<br>Saturday<br>1:00 PM   | Kenan Stadium in Chapel Hill, NC | \$25 - \$190 |
| <a href="#">North Carolina State at North Carolina Football Tickets 11/22</a> | 11/22/2008<br>Saturday<br>1:00 PM  | Kenan Stadium in Chapel Hill, NC | \$25 - \$412 |

# Interstate Wildlife Violator Compact

- SL 2008-120 (pg. 6)

# Compensation for erroneous conviction (SL 2008-173 pg. 8)

- Increases cap on compensation
- Provides for lost educational or training opportunities