

2023 Legislation Affecting Criminal Law and Procedure

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Below are summaries of 2023 legislation affecting criminal law, criminal procedure, and motor vehicle law. To obtain the text of the legislation, click on the link provided below or go to the General Assembly's website, www.ncleg.gov. Be careful to note the effective date of each piece of legislation.

- 1) [S.L. 2023-6 \(H 40\)](#), as amended by section 4 of S.L. 2023-71 (S 626): **Rioting**. Effective for offenses committed on or after December 1, 2023, section 1 of this act increases the penalties and adds new offenses for rioting and inciting to riot under G.S. 14-288.2. This section makes the following changes to G.S. 14-288.2:
 - Amends subsection (c) to provide that any person who willfully engages in a riot is guilty of a Class H felony if in the course of the riot the person brandishes any dangerous weapon or uses a dangerous substance.
 - Adds new subsection (c1), which provides that any person who willfully engages in a riot is guilty of a Class F felony if in the course of the riot the person causes property damage in excess of \$2,500 or causes serious bodily injury.
 - Adds new subsection (c2), which provides that any person who willfully engages in a riot is guilty of a Class E felony if in the course of the riot the person causes a death.
 - Amends the language of subsection (d) to punish willfully inciting another to engage in a riot and that inciting results in a riot or is directly and imminently likely to produce a riot. Increases the punishment under this subsection from a Class 1 misdemeanor to a Class A1 misdemeanor.
 - Amends subsection (e) to increase the threshold of property damage that occurs as a result of inciting to riot from \$1,500 to \$2,500 and to increase the punishment from a Class F felony to a Class E felony.
 - Adds new subsection (e1), which provides that any person who willfully incites another to engage in a riot, and that inciting is a contributing cause of a riot in which there is a death, shall be guilty of a Class D felony.
 - Adds new subsection (f), which provides that any person whose person or property is injured by reason of rioting may sue for and recover from the violator three times the actual damages sustained, as well as court costs and attorneys' fees.
 - Adds new subsection (g), which provides that mere presence alone without an overt act is not sufficient to sustain a conviction pursuant to this statute.

Civil remedies. Section 2 of this act amends G.S. 14-288.6 to add new subsection (c), which provides that any person whose person or property is injured by reason of looting may sue for and recover from the violator three times the actual damages sustained, as well as court costs and attorneys' fees.

Assault on emergency personnel. Section 3 of this act increases the punishment and adds new offenses for assault on emergency personnel under G.S. 14-288.9. This section of the act: (1) increases the punishment for committing an assault causing physical injury upon emergency personnel from a Class I felony to a Class H felony; (2) adds new subsection (e), which provides that any person who commits an assault upon emergency personnel causing serious bodily injury to the emergency personnel is guilty of a Class E felony; and (3) adds new subsection (f), which provides that any person who commits an assault upon emergency personnel causing death to the emergency personnel is guilty of a Class D felony.

Pretrial release. Effective for offenses committed on or after December 1, 2023, section 4 of this act adds new G.S. 15A-534.8 which requires pretrial release conditions for rioting and looting offenses to be determined by a judge. Pursuant to the new statute, the judge must consider the defendant's criminal history when setting the conditions of release but must not unreasonably delay the determination of conditions of pretrial release for the purpose of reviewing the defendant's criminal history report. The judge must act within 24 hours of arrest of the defendant, and if a judge has not acted, then a magistrate must act. In addition to the pretrial release provisions of G.S. 15A-534, the following provisions apply:

- (1) If the judge determines that the immediate release of the defendant will pose a danger of injury to others and that the execution of an appearance bond will not reasonably assure that the injury will not occur, the judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.
- (2) A judge may order the defendant to stay away from specific locations or property where the offense occurred. This condition may be imposed in addition to requiring that the defendant execute a secured appearance bond.
- (3) In the event that the defendant is mentally ill or a substance abuser and dangerous to himself or herself or others, the provisions of Article 5 of Chapter 122C of the General Statutes apply.

- 2) **S.L. 2023-8 (S 41): Concealed carry.** Effective for offenses committed on or after December 1, 2023, this act creates new subsection (1c) to G.S. 14-269.2(a) to define "school operating hours." Under this new subsection, school operating hours is defined as any time when the premises are being used for: (1) curricular or extracurricular activities; (2) educational, instructional, or school-sponsored activities; or (3) programs for minors by entities not affiliated with the religious institution.

This act also creates new subsection (k1) to G.S. 14-269.2, to provide that the laws prohibiting weapons on campus or other educational property will not apply to a person who has a valid concealed handgun permit or who is exempt from obtaining a permit, if all of the following conditions apply:

- (1) The person possesses and carries a handgun on educational property other than an institution of higher education as defined by G.S. 116-143.1 or a nonpublic, postsecondary educational institution.
- (2) The educational property is the location of both a school and a building that is a place of religious worship as defined in G.S. 14-54.1.
- (3) The weapon is a handgun.

- (4) The handgun is only possessed and carried on educational property outside of the school operating hours.
- (5) The person or persons in legal possession or control of the premises have not posted a conspicuous notice prohibiting the carrying of a concealed handgun on the premises in accordance with G.S. 14-415.11(c).

Under this subsection, property owned by a local board of education or county commission is not considered a building that is a place of religious worship as defined in G.S. 14-54.1.

Effective for offenses committed on or after July 1, 2023, section 2 of this act amends G.S. 14-415.27 to expand the list of people with a valid concealed handgun permit who may carry a concealed handgun in the areas listed in G.S. 14-415.11(c) unless otherwise prohibited by federal law. Under this expansion, new subsection (10) includes—for only a law enforcement facility—a person employed by a law enforcement agency who (i) is not a law enforcement officer sworn and certified, (ii) has been designated in writing by the head of the law enforcement agency in charge of the facility, (iii) has in the person's possession written proof of the designation, and (iv) has not had the designation rescinded by the head of the law enforcement agency in charge of the facility. The new subdivision (10) clarifies that nothing in the subsection prohibits the head of the law enforcement agency in charge of a facility from rescinding any written designation described in the subdivision.

Repeal of pistol purchase permits. Effective for pistols sold, given away, transferred, purchased, or received on or after March 29, 2023, section 2 of this act repeals G.S. 14-402 through G.S. 14-405, G.S. 14-407.1, and G.S. 14-315(b1)(1) regarding pistol purchase permits. This section clarifies that prosecutions for offenses committed before March 29, 2023 are not abated or affected by the repeal, and the statutes that would be applicable but for the repeal remain applicable to those prosecutions.

- 3) **S.L. 2023-13 (S 157): DMV licensing requirements.** Effective for applications for licenses submitted on or after May 24, 2021, S.L. 2021-24 amended G.S. 20-11 to require a person who is at least 16 years old but less than 18 years old to have held a limited learner's permit for at least six months in order to obtain a limited provisional license. Previously, the requirement was twelve months. S.L. 2021-134 extended the expiration of this provision to December 31, 2022. Effective May 6, 2023, section 1 of this act further extends the expiration of this provision to December 31, 2023.

Effective for applications for licenses submitted on or after January 1, 2024, section 2 of this act amends G.S. 20-11(d)(1) to allow a person who is at least 16 years old but less than 18 years old to obtain a limited provisional license if the person has held a limited learner's permit for at least nine months. Previously, the requirement was twelve months.

Effective for offenses committed on or after August 1, 2023, section 3 of this act expands G.S. 20-11(e)(4) to allow a limited provisional licensee to drive an additional passenger under 21 years of age who is not a member of the license holder's immediate family or member of the license holder's household when that passenger is a student being driven directly to or from school. This provision applies even if a family member or member of the same household as the license holder who is younger than 21 years of age is already a passenger in the vehicle.

For further discussion, see Shea Denning, [General Assembly Loosens Requirements for Teen Licensure](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (May 25, 2023).

4) [S.L. 2023-14 \(S 20\)](#), as amended by section 14 of [S.L. 2023-65 \(H 190\)](#): Changes to health care laws.

This act makes various changes to health care laws, revises the laws pertaining to the safe surrender of infants, and creates new offenses surrounding assault and domestic violence.

Abortion. Under G.S. 14-45.1, it is lawful to advise, procure, or cause a miscarriage or abortion during the first 20 weeks of a woman's pregnancy so long as the procedure is performed by a licensed, qualified physician in a certified, suitable hospital or clinic. Existing law also permits miscarriage or abortion procedures after the 20th week if there is a medical emergency. Effective July 1, 2023, section 1.1 of this act repeals G.S. 14-45.1. Section 1.2 of this act significantly revises the abortion laws under Article 1I of Chapter 90 of the General Statutes. Under the amended article, it is unlawful after the twelfth week of a woman's pregnancy to procure or cause a miscarriage or abortion in the State of North Carolina, except under certain circumstances. For further discussion, see Jill Moore, [North Carolina's Pending Abortion Legislation](#), COATES' CANONS N.C. LOCAL GOV'T LAW (May 8, 2023).

Effective for offenses committed on or after July 1, 2023, section 1.3 of this act adds new G.S. 14-44.1 which prohibits providing or advertising abortion-inducing drugs to pregnant women. An individual or organization who violates this new law commits an infraction and is subject to a fine of five thousand dollars (\$5,000) per violation.

Effective October 1, 2023, section 2.2 of this act adds new Part 4A regarding Abortion Clinic Licensure to Article 6 of Chapter 131E of the General Statutes. Under the new law, G.S. 131E-153.7 provides that a person who owns in whole or in part or operates an abortion clinic without a license is guilty of a Class 3 misdemeanor and upon conviction will be subject only to a fine of up to fifty dollars (\$50.00) for the first offense and up to five hundred dollars (\$500.00) for each subsequent offense. Each day of continuing violation after conviction is considered a separate offense.

Effective July 1, 2023, section 3 of this act adds new Article 1M titled "Born-Alive Abortion Survivors Protection Act" to Chapter 90 of the General Statutes. Under the new law, unless the conduct is covered under some other provision of law providing greater punishment, a person who violates new G.S. 90-21.142 (requirements for health care practitioners) or new G.S. 90-21.143 (mandatory reporting of noncompliance) is guilty of a Class D felony, which also includes a fine of up to two hundred fifty thousand dollars (\$250,000). Any person who intentionally performs or attempts to perform an overt act that kills a child born alive shall be punished as under G.S. 14-17(c) for murder.

Under current law, any person who practices, offers to practice, or holds oneself out to practice midwifery without approval in violation of G.S. 90-178.3(a) is guilty of a Class 3 misdemeanor. Effective July 1, 2023, section 4.3 of this act amends G.S. 90-178.7 to provide that any person who practices midwifery without being duly approved is guilty of a Class 3 misdemeanor. Any person who practices midwifery without being duly approved and who is falsely representing himself or herself in a manner as being approved is guilty of a Class I felony.

Infant protections. Effective for offenses committed on or after December 1, 2023, section 6.4 of this act amends G.S. 14-322.3 to permit lawful abandonment of an infant that is not more than 30 days of age by voluntarily delivering the infant as provided in Article 5A of Chapter 7B of the General Statutes. This statute previously provided the lawful abandonment for infants up to seven days of age.

Effective December 1, 2023, section 8.2 amends G.S. 14-33(c) to add assault on a pregnant woman to the list of misdemeanor assault offenses.

Satellite-based monitoring. Effective for court orders for enrollment in satellite-based monitoring programs issued on or after October 1, 2023, section 8.1 of this act makes substantial revisions to the North Carolina's satellite-based monitoring (SBM) scheme. The act amends G.S. 14-208.40A(c1) to remove the ten-year cap on SBM for all offenders. Under the amended law, defendants in the following categories must be placed on SBM for life if the court determines that the highest level of supervision and monitoring is required: (1) those convicted of aggravated offenses, (2) those who qualify as reoffenders or as sexually violent predators, and (3) those convicted of statutory rape or sex offense of a child by an adult. For defendants convicted of offenses involving abuse of a minor, the court must choose a term in its discretion not to exceed fifty years. For further discussion, see Phil Dixon, [2023 Satellite-Based Monitoring Revisions](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Jun. 14, 2023).

Domestic violence. Effective for offenses committed on or after December 1, 2023, section 8.3 adds new G.S. 14-32.5 proscribing the misdemeanor crime of domestic violence. Under this new law, a person is guilty of a Class A1 misdemeanor if that person uses or attempts to use physical force, or threatens the use of a deadly weapon, against another person and the person who commits the offense is: (1) a current or former spouse, parent, or guardian of the victim; (2) a person with whom the victim shares a child in common; (3) a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian; (4) a person similarly situated to a spouse, parent, or guardian of the victim; or (5) a person who has a current or recent former dating relationship with the victim. The statute further clarifies that the term "dating relationship" is as defined in [18 U.S.C. § 921](#). For further discussion, see Brittany Bromell, [New Misdemeanor Crime of Domestic Violence](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Jun. 6, 2023).

- 5) [S.L. 2023-15 \(S 206\)](#): **Counterfeit pills.** Effective for offenses committed on or after December 1, 2023, section 1 of this act amends G.S. 90-108(a)(12) to prohibit the possession, manufacture, distribution, export, or import of any three-neck round-bottom flask, tableting machine, encapsulating machine, or gelatin capsule, or any equipment, chemical, product, or material which may be used to create a counterfeit controlled substance, knowing, intending, or having reasonable cause to believe that it will be used to create a counterfeit controlled substance. The act also adds new G.S. 90-108(a)(12a), which prohibits the possession, manufacture, distribution, export, or import of any three-neck round-bottom flask, tableting machine, encapsulating machine, or gelatin capsule, or any equipment, chemical, product, or material which may be used to manufacture a controlled substance or listed chemical, knowing, intending, or having reasonable cause to believe that it will be used to manufacture a controlled substance or listed chemical. This prohibition does not apply to a pharmacy, a pharmacist, a pharmacy technician,

or a pharmacy intern licensed or permitted under Article 4A of Chapter 90 of the General Statutes possessing any item included in this statute utilized in the compounding, dispensing, delivering, or administering of a controlled substance pursuant to a prescription. Violation of this subsection is a Class E felony.

6) **S.L. 2023-42 (H 347): Sports wagering.** Effective January 8, 2024, section 1 of this act enacts new Article 9 to Chapter 18C of the General Statutes. The new article authorizes and regulates wagering on professional, college, and amateur sports. The following criminal penalties are included in the article as G.S. 18C-918:

- (a) Any person who knowingly offers or engages in sports wagering in violation of this Article is guilty of a Class 2 misdemeanor.
- (b) Any person under the age of 21 who engages in sports wagering is guilty of a Class 2 misdemeanor.
- (c) Any person who knowingly attempts to suborn, collude, or otherwise conspire to influence the outcome of any competition or aspect of any competition that is the subject of sports wagering is guilty of a Class G felony.
- (d) Any applicant for an interactive sports wagering license, a service provider license, or sports wagering supplier license who willfully furnishes, supplies, or otherwise gives false information on the license application shall be guilty of a Class I felony.

An interactive sports wagering operator or its service providers will not be charged with a violation of subsection (a) or (c) of G.S. 18C-918 absent actual notice and knowledge that a person is underage or giving false information.

Horse racing. Effective January 8, 2024, section 3 of this act enacts new Article 10 to Chapter 18C of the General Statutes. This new article regulates wagering on pari-mutuel wagering (horse racing). The following criminal penalties are included in the article as G.S. 18C-1020:

- (a) Any person who knowingly offers or engages in pari-mutuel wagering in violation of this Article is guilty of a Class 2 misdemeanor.
- (b) Any person under the age of 21 who engages in pari-mutuel wagering is guilty of a Class 2 misdemeanor.
- (c) Any person who knowingly attempts to suborn, collude, or otherwise conspire to influence the outcome of any competition or aspect of any competition that is the subject of pari-mutuel wagering is guilty of a Class G felony.
- (d) Any person applying to become an ADW (advanced-deposit wagering) licensee who willfully furnishes, supplies, or otherwise gives false information on the license application is guilty of a Class I felony.

The ADW licensee will not be charged with a violation of subsection (a) or (c) of G.S. 18C-1020 absent actual notice and knowledge that a person is underage or giving false information.

7) **S.L. 2023-45 (H 87): Probation modification.** Effective for petitions filed on or after June 16, 2023, section 1 of this act adds new subsection (b2) to G.S. 15A-1344, allowing a district attorney to file a petition to reduce, terminate, extend, modify, or revoke probation in the district court or superior court district where probation was imposed. The petition must be based on the violation of a condition of probation. Any petition filed by a district attorney must be served on the probationer

by the supervising probation officer. If a motion to extend is filed, a probationer determined to be indigent is entitled to services of counsel under G.S. 7A-451.

Effective for delegations of court authority entered on or after December 1, 2023, section 2 of this act enacts new G.S. 15A-1344.2, regarding the delegation of authority to reduce a term of supervised probation. Under this new statute, a court may delegate its authority to reduce a term of supervised probation when a probation officer finds that an offender (i) is currently in compliance with the terms of the offender's probation and (ii) has made diligent progress regarding the offender's probation. The delegation of the court's authority may be revoked by the court at any time by a written order filed with the clerk of superior court as soon as practicable following the revocation, and the clerk must notify the probation officer of this revocation of delegated authority as soon as practicably possible. Any order entered must require that no term of supervision be reduced unless all restitution ordered as part of the sentence has been paid in full.

Proof of any one or more of the following, demonstrated to the satisfaction of the probation officer, constitutes diligent progress:

- (1) The successful completion of a validated drug or mental health treatment program, evidenced-based program, or any other vocational or life skills program.
- (2) The successful completion of at least six months of active enrollment in an education program in which the offender is seeking a trade certification, high school diploma, General Educational Development (GED) degree, associate degree, bachelor's degree, or graduate degree.
- (3) The successful completion of at least six months of employment, demonstrated by proof of wages.

A reduction of a term of supervision does not become effective until all of the following occur:

- (1) The probation officer files a written affidavit with the clerk of superior court seeking a final order of the court confirming the probation officer's decision to reduce the offender's term.
- (2) Notification is given to the district attorney and the victim pursuant to G.S. 15A-837 and, if requested by either the district attorney or the victim, a hearing and an opportunity to be heard is granted.
- (3) The court approves the reduction.

A probation officer may not reduce an offender's term of supervised probation by more than one-fourth the amount of time the offender was originally required to serve on supervised probation. If a probation officer reduces an offender's term of supervised probation on more than one occasion, the total reduction of the offender's term of supervised probation may not exceed one-fourth the amount of time the offender was originally required to serve on supervised probation.

- 8) **S.L. 2023-47 (S 58): Property crimes against utilities.** Effective for offenses committed on or after December 1, 2023, section 1 of this act adds new G.S. 14-150.2, making it unlawful to knowingly and willfully (i) destroy, injure, or otherwise damage, or attempt to destroy, injure, or otherwise damage, an energy facility or (ii) obstruct, impede, or impair the services or transmissions of an energy facility, or attempt to obstruct, impede, or impair the services or transmissions of an energy facility. Commission of this offense is a Class C felony, and if the commission results in the death of

another, it is a Class B2 felony. Under either circumstance, a person who commits this offense must be ordered to pay a fine of two hundred fifty thousand dollars (\$250,000). Each violation of this statute constitutes a separate offense and does not merge with any other offense.

Section 2 of this act amends G.S. 14-159.12(c) to increase the punishment for first degree trespass from a Class A1 misdemeanor to a Class I felony under certain circumstances. The statute is further amended to clarify and add to the existing list of circumstances under which the increased punishment applies. These newly added circumstances include when the offense is committed on (i) an energy facility as defined by G.S. 14-150.2, or (ii) a facility owned by a public utility, as defined under G.S. 62-3, or a unit of local government, used for the treatment of wastewater, including sewage, industrial waste, or other wastes of a liquid nature. Section 2 of this act also amends G.S. 14-159.12(d) to increase the punishment for first degree trespass from a Class H felony to a Class G felony under another discrete set of circumstances.

Section 3 of this act amends G.S. 14-154 to punish injury to wires and other fixtures of telephone, broadband, broadcast, or cable telecommunications companies (previously injury to wires and other fixtures of telephone, telegraph, and electric-power companies). The punishment for this offense is increased from a Class I felony to a Class C felony.

- 9) [S.L. 2023-63 \(S 582\)](#): **North Carolina Farm Act.** This act makes various changes to the agricultural and wastewater laws of the state.

Property-hauling vehicle. Effective June 27, 2023, section 3 of this act amends G.S. 20-4.01(31) to clarify that a fifth-wheel trailer, recreational vehicle, semitrailer, or trailer used exclusively or primarily to transport vehicles in connection with motorsports competition events is not a property-hauling vehicle.

Animal waste spills. Effective for offenses committed on or after December 1, 2023, section 4 of this act enacts new G.S. 14-399.3, creating a class 3 misdemeanor offense for leaving the scene of an animal waste spill. Under this new statute, the driver of any vehicle who knows or reasonably should know that (i) animal waste except for livestock or poultry excreta generated by live animals being transported on the vehicle, (ii) dead animals or animal parts except for feathers from live birds being transported on the vehicle, or (iii) animal by-products have been blown, scattered, spilled, thrown, or placed from the vehicle shall immediately stop his or her vehicle at the scene of the incident.

The driver must remain with the vehicle at the scene of the incident until a law enforcement officer completes the investigation of the incident or authorizes the driver to leave and the vehicle to be removed, unless remaining at the scene places the driver or others at significant risk of injury. Prior to the completion of the investigation or the consent of the officer to leave, the driver may not facilitate, allow, or agree to the removal of the vehicle from the scene for any purpose other than the following:

- to call for a law enforcement officer;
- to call for assistance in removing the materials that were blown, scattered, thrown, spilled, or placed from the vehicle; or
- to remove oneself or others from significant risk of injury.

If the driver does leave for a reason permitted by the statute, then the driver must return with the vehicle to the scene of the incident within a reasonable period of time, unless otherwise instructed by a law enforcement officer.

Unmanned aircraft systems. Effective for offenses committed on or after December 1, 2023, section 10 of this act creates new G.S. 15A-300.4 to prohibit the use of an unmanned aircraft system near a forest fire. Under the new statute, no person, entity, or State agency shall use an unmanned aircraft system within either a horizontal distance of 3,000 feet or a vertical distance of 3,000 feet from any forest fire within the jurisdiction of the North Carolina Forest Service. Unless the use of the unmanned aircraft system is otherwise prohibited under State or federal law, the prohibitions under this statute do not apply to:

- (1) A person operating an unmanned aircraft system with the consent of the official in responsible charge of management of the forest fire.
- (2) A law enforcement officer using an unmanned aircraft system in accordance with G.S. 15A-300.1(c).
- (3) A North Carolina Forest Service employee or a person acting under the direction of a North Carolina Forest Service employee.

The penalties for using an unmanned aircraft system in violation of this statute are as follows:

1. When such use is the proximate cause of the death of another person, the offender is guilty of a Class D felony and must be fined at least one thousand dollars (\$1,000).
2. When such use is the proximate cause of serious bodily injury to another person, the offender is guilty of a Class E felony and must be fined at least one thousand dollars (\$1,000).
3. When such use is the proximate cause of serious physical or mental injury to another person, the offender is guilty of a Class F felony and must be fined at least one thousand dollars (\$1,000).
4. When such use interferes with emergency operations and such interference proximately causes damage to any real or personal property or any tree, wood, underwood, timber, garden, crops, vegetables, plants, lands, springs, or any other matter or thing growing or being on the land, the offender is guilty of a Class G felony and must be fined at least one thousand dollars (\$1,000).
5. When such use interferes with emergency operations, the offender is guilty of a Class H felony and must be fined at least one thousand dollars (\$1,000).
6. When such use is the proximate cause of physical or mental injury to another person, the offender is guilty of a Class I felony and must be fined at least one thousand dollars (\$1,000).
7. When such use is not covered under another provision of law providing greater punishment, the offender is guilty of a Class A1 misdemeanor and must be fined at least one thousand dollars (\$1,000).

Larceny of timber. Effective for offenses committed on or after December 1, 2023, section 11 of this act amends G.S. 14-135(a) to include new subsections (3) and (4) as two additional methods by which a person can commit the offense of larceny of timber. Under new G.S. 14-135(a)(3), a person commits the offense of larceny of timber if the person knowingly and willfully aids, hires, or counsels an individual to cut down, injure, or remove any timber owned by another person without the

consent of the owner of the land or the owner of the timber, or without a lawful easement running with the land. Under new G.S. 14-135(a)(4), a person commits the offense of larceny of timber if the person knowingly and willfully transports forest products that have been cut down, removed, obtained, or acquired from the property of a landowner without the consent of the owner of the land or the owner of the timber, or without a lawful easement running with the land.

Section 11 of this act also adds new G.S. 14-135(b)(3) to provide that a person is not guilty of an offense under G.S. 14-135(a)(3) if the person is an electric power supplier and either: (a) the person believed in good faith that consent of the owner had been obtained prior to aiding, hiring, or counseling the individual to cut down, injure, or remove the timber; or (b) the person believed in good faith that the cutting down, injuring, or removing of the timber was permitted by a utility easement or was necessary to remove a tree hazard.

- 10) [S.L. 2023-69 \(H 192\)](#): Unmanned aircraft systems in fishing.** Effective for activities occurring on or after July 1, 2023, section 2.6 of this act amends G.S. 14-401.24 to clarify that “to fish” is defined as in G.S. 113-130, except when an unmanned aircraft or unmanned aircraft system is used during, immediately preparatory to, or immediately subsequent to the taking of fish for (i) spotting; locating; recording, broadcasting, or streaming video of fish; or (ii) deploying bait.
- 11) [S.L. 2023-71 \(S 626\)](#): Human trafficking.** Effective for offenses committed on or after December 1, 2023, section 3 of this act amends G.S. 14-43.11 to include patronage and solicitation as methods by which a person can commit the offense of human trafficking.
- 12) [S.L. 2023-74 \(H 790\)](#): Innocence Inquiry Commission; Interrogations; Informant statements.** Effective for proceedings held on or after July 7, 2023, section 1 of this act modifies laws related to the North Carolina Innocence Inquiry Commission. The act amends G.S. 15A-1465 to remove the requirement that the Director of the North Carolina Innocence Inquiry Commission report on all funds received through private gifts, donations, or devises from any source other than the State. The act also amends G.S. 15A-1475 to require that the Commission's annual report include a record of the receipt and expenditure of all private donations, gifts, and devises for the reporting period.

The act also amends the Commission’s proceedings under G.S. 15A-1468 as follows:

- Extends the time a prehearing conference must be held from 10 days to 30 days before any proceedings of the full Commission.
- Adds that the Commission may call for a prehearing conference at any time the Commission has developed credible evidence to support a claim of factual innocence. If a Commission hearing is continued for any reason, that at least 10 days before the newly scheduled hearing a subsequent prehearing conference be held to discuss any newly developed evidence that was not previously provided.
- Gives the district attorney, or designee, and the claimant's counsel the ability to access, review, and inspect the Commission's entire case file at least 60 days prior to the Commission hearing. The Commission must present and make the information available in a reasonably organized manner that is not to be overly burdensome to the Commission, the district attorney, or the claimant's counsel.

- Extends the window during which a district attorney may provide the Commission with a written statement, from at least 72 hours before a Commission proceeding to at least 10 days before a Commission hearing.
- Adds that the Commission has an ongoing duty to provide any newly discovered evidence to the district attorney and the claimant's counsel until the hearing begins. Requires that evidence not provided to the district attorney and the claimant's counsel in the initial release of information to be provided at least 10 days prior to the Commission hearing. Requires the Commission to keep a clear record of which materials have been previously made available for review and inspection.
- Requires the victim to be notified at least 10 days (previously 30 days) before initial prehearing conference. Adds that the Director is allowed to notify the victim at an earlier date in the proceedings.
- Adds that favorable to the convicted person disclosed through formal inquiry or Commission proceedings must be disclosed to include the district attorney, or the district attorney's designee, of the district where the claimant was convicted of the felony upon which the claim of factual innocence is based.

The act expands the information that must be disclosed to the postcommission three-judge panel under G.S. 15A-1469 to include all information required by G.S. Chapter 15A, Article 48 as if the parties have requested in writing that the other party comply with a discovery request. The amending statute further deems the Commission file disclosed and provides that the statute does not prevent the three-judge panel from setting an earlier disclosure deadline or the parties from agreeing to provide earlier disclosure. The amended statute also clarifies that evidence not timely disclosed is inadmissible at the hearing, absent good cause shown.

Electronic recording of juvenile interrogations. Effective for all custodial interrogations occurring on or after October 1, 2023, section 2 of this act amends G.S. 15A-211 to make laws governing electronic recording of juvenile interrogations applicable to any custodial interrogation of any person in a felony criminal investigation conducted at any place of detention.

The act revises the definition of “in its entirety” under G.S. 15A-211(b) to include an uninterrupted record that begins at the start of the interview of custodial interrogation and ends when the custodial interrogation has completely finished. It also eliminates the requirement for the record to clearly show both the interrogator and the person in custody and instead requires any visual recording of a custodial interrogation to film both the interrogator and suspect. The revised definition further adds that the record must reflect all starting and ending times and dates, as well as the starting time and date of the recess and resumption of the interrogation.

New subsection G.S. 15A-211(e1) requires recordings of non-defendant custodial interrogations to be provided to the juvenile or criminal defendant as part of discovery requirements under G.S. Chapters 7B and 15A. Amended G.S. 15A-211(h) adds that electronic recordings of non-defendant custodial interrogations can be destroyed at the conclusion of the State appeal process.

CODIS hits. Effective October 1, 2023, section 3 of this act amends G.S. 15A-266.7(a) to require The Crime Laboratory to notify the office of the district attorney for all CODIS matches.

In-custody informant statements. Effective for offenses committed on or after October 1, 2023, section 4 of this act enacts new Article 54 of Chapter 15A of the General Statutes, regarding the corroboration of in-custody informant statements. Codified as G.S. 15A-981, the Article defines "in-custody informant" to mean a person, other than a codefendant, accomplice, or coconspirator, whose testimony is based on statements allegedly made by the defendant while both the defendant and the informant were held within a city or county jail or a State correctional institution or otherwise confined, where statements relate to offenses that occurred outside of the confinement.

Under the statute, all interviews of in-custody informants by a law enforcement officer must be recorded using a visual recording device that provides an authentic, accurate, unaltered, and uninterrupted record of the interview that clearly shows both the interviewer and the in-custody informant. However, this requirement does not apply to attorneys for the State or defense conducting an interview as part of trial preparation.

The State must not destroy or alter any electronic recording of an in-custody informant interview until one year after the completion of all State and federal appeals of the conviction, including the exhaustion of any appeal of any motion for appropriate relief or habeas corpus proceedings. Every electronic recording shall be clearly identified and catalogued by law enforcement personnel.

13) [S.L. 2023-75 \(H 813\)](#): Pretrial Integrity Act. Effective for offenses committed on or after October 1, 2023, section 1 of this act amends G.S. 7B-1906(b1) to provide that further hearings to determine the need for secure custody shall be held at intervals of no more than 30 calendar days for a juvenile who satisfies either of the following criteria: (1) was 16 years of age or older at the time the juvenile allegedly committed an offense that would be a Class A, B1, B2, C, D, E, F, or G felony if committed by an adult; or (2) was 13, 14, or 15 years of age at the time the juvenile allegedly committed an offense that would be a Class A felony if committed by an adult.

Section 2 of this act expands G.S. 15A-533(b) regarding right to pretrial release to provide that a judge must determine in the judge's discretion whether a defendant charged with any of the following crimes may be released before trial:

- (1) G.S. 14-17 (First- or second-degree murder) or an attempt to commit first or second-degree murder.
- (2) G.S. 14-39 (First- or second-degree kidnapping).
- (3) G.S. 14-27.21 (First degree forcible rape).
- (4) G.S. 14-27.22 (Second degree forcible rape).
- (5) G.S. 14-27.23 (Statutory rape of a child by an adult).
- (6) G.S. 14-27.24 (First degree statutory rape).
- (7) G.S. 14-27.25 (Statutory rape of person who is 15 years of age or younger).
- (8) G.S. 14-27.26 (First degree forcible sexual offense).
- (9) G.S. 14-27.27 (Second degree forcible sexual offense).
- (10) G.S. 14-27.28 (Statutory sexual offense with a child by an adult).
- (11) G.S. 14-27.29 (First degree statutory sexual offense).
- (12) G.S. 14-27.30 (Statutory sexual offense with a person who is 15 years of age or younger).
- (13) G.S. 14-43.11 (Human trafficking).
- (14) G.S. 14-32(a) (Assault with a deadly weapon with intent to kill inflicting serious injury).
- (15) G.S. 14-34.1 (Discharging certain barreled weapons or a firearm into occupied property).

- (16) First degree burglary pursuant to G.S. 14-51.
- (17) First degree arson pursuant to G.S. 14-58.
- (18) G.S. 14-87 (Robbery with firearms or other dangerous weapons).

If the judge determines that release is warranted for a defendant charged with any of the crimes listed above, the judge shall set conditions of pretrial release in accordance with G.S. 15A-534. A defendant charged with a noncapital offense that is not listed above must otherwise have conditions of pretrial release determined in accordance with G.S. 15A-534.

The act also enacts new G.S. 15A-533(h) to provide that if a defendant is arrested for a new offense allegedly committed while the defendant was on pretrial release for another pending proceeding, the judicial official who determines the conditions of pretrial release for the new offense must be a judge. The judge must consider the defendant's criminal history when setting conditions of pretrial release but must not unreasonably delay the determination of conditions of pretrial release for the purpose of reviewing the defendant's criminal history report. A magistrate may set the conditions of pretrial release at any time if the new offense is a violation of Chapter 20 of the General Statutes, other than a violation of G.S. 20-138.1, 20-138.2, 20-138.2A, 20-138.2B, 20-138.5, or 20-141.4. Under this statute, a defendant may be retained in custody not more than 48 hours from the time of arrest without a judge making a determination of conditions of pretrial release. If a judge has not acted within 48 hours from the time of arrest of the defendant, the magistrate shall set conditions of pretrial release in accordance with G.S. 15A-534.

For further discussion, see M. Jeanette Pitts, [North Carolina's new Pretrial Integrity Act](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Aug. 23, 2023). See also Brittany Bromell, [More on the New Pretrial Integrity Act](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Sep. 13, 2023).

- 14) S.L. 2023-76 (H 34): Assaults on emergency personnel.** Effective for offenses committed on or after December 1, 2023, this act creates a new offense for and modifies several offenses regarding assault on emergency personnel.

Section 2 of this act enacts new G.S. 14-34.1A prohibiting the willful or wanton discharge or attempted discharge of any firearm or barreled weapon capable of discharging shot, bullets, pellets, or other missiles at a muzzle velocity of at least 600 feet per second at or into any unoccupied emergency vehicle. The statute defines "emergency vehicle" to include:

- (1) A law enforcement vehicle.
- (2) A fire department vehicle.
- (3) A public or private ambulance.
- (4) A rescue squad emergency service vehicle.
- (5) A State or local emergency management vehicle.
- (6) A vehicle owned or operated by the North Carolina National Guard.
- (7) A vehicle owned or operated by any branch of the Armed Forces of the United States.
- (8) A vehicle owned or operated by the Department of Adult Correction.
- (9) A vehicle owned or operated by the Division of Juvenile Justice of the Department of Public Safety.

Unless the conduct is covered under some other provision of law providing greater punishment, the offense is a Class H felony.

Section 3 of this act amends G.S. 14-34.8 regarding the criminal use of a laser device. Under the amended statute, it is a Class I felony to intentionally point a laser device while the device is emitting a laser beam at any of the following while the person is in the performance of his or her duties:

- a. A law enforcement officer.
- b. A probation or parole officer.
- c. A person whose employment duties include the custody, transportation, or management of persons who are detained or confined to a detention facility, youth development center, or correctional institution operated under the jurisdiction of the State or a local government.
- d. A firefighter.
- e. An emergency medical technician or other emergency health care provider.
- f. A member of the North Carolina National Guard.
- g. A member of any branch of the Armed Forces of the United States.
- h. Court counselors whose employment duties include intake, probation, post-release supervision, and court supervision services of juveniles.

The amended statute further prohibits intentionally pointing a laser device while the device is emitting a laser beam at a law enforcement agency animal or a search and rescue animal while the animal is in the performance of its duty. This offense is a Class A1 misdemeanor if the law enforcement agency animal or the search and rescue animal is caused "harm" as that term is defined by G.S. 14-163.1. The statute makes it an infraction to intentionally point a laser device while the device is emitting a laser beam at (i) the head or face of any person not mentioned above.

Section 4 of this act increases the punishment for assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers under G.S. 14-34.2 from a Class F felony to a Class E felony.

Section 5 of this act increases the punishment for assault with a firearm upon a member of the North Carolina National Guard while the member is in the performance of his or her duties under G.S. 14-34.5(a1) from a Class E felony to a Class D felony.

Section 6 of this act increases the punishment for several offenses under G.S. 14-34.7. Assault on a law enforcement officer, probation officer, or parole officer that causes serious bodily injury on the officer is increased from a Class F felony to a Class E felony. Assault on a member of the North Carolina National Guard that causes serious bodily injury on the member is increased from a Class F felony to a Class E felony. Assault on a person who is employed at a detention facility operated under the jurisdiction of the State or a local government that causes serious bodily injury on the employee is increased from a Class F felony to a Class E felony. An assault on any of the aforementioned people that results in physical injury of that person is increased from a Class I felony to a Class H felony.

Section 7 of this act expands G.S. 14-32 regarding felonious assault with a deadly weapon. The amended statute (i) punishes assault on an emergency worker with a deadly weapon inflicting

serious injury as a Class D felony, (ii) punishes assault an emergency worker with a deadly weapon with intent to kill as a Class D felony, and (iii) defines "emergency worker" as a law enforcement officer, firefighter, emergency medical technician, or medical responder.

15) [S.L. 2023-85 \(S 246\)](#): **Second degree trespass. Effective for offenses committed on or after December 1, 2023, this act amends G.S. 14-159.13 to include that the offense of second degree trespass may be committed if, without authorization, a person enters or remains on the curtilage of a dwelling of another between the hours of midnight and 6:00 A.M. Commission of the offense by way of this action is a Class 2 misdemeanor. Second degree trespass is otherwise a Class 3 misdemeanor.**

16) [S.L. 2023-86 \(S 171\)](#): **Public safety. Effective for convictions occurring on or after October 1, 2023, section 7 of this act expands the definition of "reportable conviction" under G.S. 14-208.6(4) to include a final conviction in a State court-martial proceeding imposing confinement under G.S. 127A-48 or G.S. 127A-49 for an offense which is substantially similar to an offense against a minor or a sexually violent offense.**

Effective for wood residual (i) transported, (ii) stored, or (iii) otherwise interacted with on or after July 10, 2023, section 2 of this act enacts new G.S. 20-4.01(49a), defining wood residual in reference to logging, manufacturing, or milling processes, as woody waste that is generated by the cutting, chipping, grinding, shaping, or smoothing of wood or wood products. Wood residual includes bark, chips, edging, sawdust, shavings, leaves, wood chips, or wood pellets manufactured primarily from wood and may include small amounts of glue, binder, or resin from wood products. Wood residual does not include woody waste mixed with soil or other non-wood materials like plastic, metal, cement, or mineral fibers, and it must be transported in bulk form.

17) [S.L. 2023-97 \(S 91\)](#): **Street takeovers. Effective for offenses committed on or after December 1, 2023, section 2 of this act enacts new G.S. 20-141.10, prohibiting street takeovers. The statute defines street takeover and other related terms including burnout, doughnut, drifting, stunt, and wheelie.**

Any person who operates a motor vehicle in a street takeover is guilty of a Class A1 misdemeanor and must pay a fine of at least one thousand dollars (\$1,000). A subsequent violation within a 24-month period is a Class H felony, including a minimum fine equal to twice the value of the vehicle involved in the offense but no less than one thousand dollars (\$1,000). Any person who operates a motor vehicle in a street takeover and assaults a law enforcement officer or knowingly and willfully threatens a law enforcement officer is guilty of a Class H felony.

The new statute also makes it a Class A1 misdemeanor to (i) knowingly participate in, (ii) coordinate through social media or otherwise, (iii) commit an overt act in furtherance of, or (iv) facilitate a street takeover. Mere presence alone without an intentional act is not sufficient to sustain a conviction.

Section 2 of this act amends G.S. 20-141.3(g) to add that when any officer of the law discovers that any person has operated or is operating a motor vehicle in violation of G.S. 20-141.10, the officer may seize the vehicle.

For further discussion, see Shea Denning, [Recent Legislation Outlaws Street Takeovers](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Aug. 10, 2023).

H & I felony pleas. Effective for pleas accepted on or after December 1, 2023, section 3 of this act amends G.S. 7A-272(c) to remove the requirement that a presiding district court judge consent to a defendant's plea of guilty or no contest to a Class H or I felony for the court to have jurisdiction to accept the plea. The act also amends the statute to add that the chief district court judge may schedule and assign sessions of court to accept guilty pleas or no contest pleas, and that the district attorney calendar agreed-upon pleas for those sessions. For further discussion, see Shea Denning, [Legislature Tweaks Jurisdictional Rules for District and Superior Courts](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Sep. 5, 2023).

Probation revocation hearings. Effective for revocation hearings held on or after December 1, 2023, section 4 of this act amends G.S. 15A-1341(a6) to add that if a probation revocation hearing for violation of a condition of a conditional discharge is heard in superior court, the superior court must enter an adjudication of guilt and shall not remand the matter to district court, unless covered by G.S. 7A-271(f). Section 4 also amends G.S. 7A-271(e) to add that once the superior court has concluded a probation revocation hearing, the superior court must proceed without remanding or sending the matter back to district court unless covered by G.S. 7A-271(f).

- 18) [S.L. 2023-103 \(H 193\): Expunctions.](#)** Effective for petitions filed on or after December 1, 2023, section 14 of this act amends expunction eligibility under G.S. 15A-145.5(a) by removing offenses under G.S. 14-54(a) as offenses exempt from the meaning of “nonviolent misdemeanor” or “nonviolent felony.”

The act also amends the time periods for expunctions of up to three nonviolent felony convictions by enacting new G.S. 15-145.5(c)(2)(a1), allowing a person convicted of one nonviolent felony under G.S. 14-54(a) to file petition for expunction 15 years after the date of the conviction or 15 years after any active sentence, period of probation, or post-release supervision related to the conviction listed in the petition has been served, whichever occurs later.

The amended law expands the scope of what the court must find in order to grant a petition for expunction of one or more nonviolent misdemeanors or one to three nonviolent felonies to include findings that (1) in addition to having no outstanding warrants or pending criminal cases, the petitioner is not under indictment, and no finding of probable cause exists against the petitioner for a felony, in any federal court or state court in the United States and (2) the petitioner is not free on bond or personal recognizance pending trial, appeal, or sentencing in any federal court or state court in the United States for a crime which would prohibit the person from having his or her petition for expunction under this section granted.

- 19) [S.L. 2023-114 \(H 186\): Juveniles.](#)** This act makes several changes to laws related to juvenile delinquency.

Transfer process. Effective for offenses committed on or after December 1, 2023, section 1 of this act amends G.S. 7B-2200.5(a)(1) to remove the requirement that the court make a finding that a bill of indictment has been returned against a juvenile charging the commission of a Class A – G felony before ordering the matter transferred to superior court for trial as an adult. The amended statute

requires that the court transfer the case to superior court, unless the prosecutor declines to transfer the case as allowed by statute, when a juvenile is charged with committing a Class A – G felony at age 16 or 17 and the juvenile is provided notice of the return of a true bill of indictment as provided in G.S. 15A-630.

Section 1 of the act also amends G.S. 7B-2200 to require the district court to transfer a case in which a Class A felony is alleged to have been committed by a juvenile at age 13, 14, or 15 and there is either (1) a finding of probable cause or (2) notice of the return of a true bill of indictment as provided in G.S. 15A-630. Previously, these cases could only be transferred following a finding of probable cause. The act also amends G.S. 7B-2202(a) to exempt cases transferred to superior court, based on a returned indictment alleging a Class A felony was committed at age 13, 14, or 15, from the requirement to hold a probable cause hearing.

Confidentiality, “Lyric and Devin’s Law.” Effective for offenses committed on or after December 1, 2023, section 2 of this act adds a new G.S. 7B-3103 to allow disclosure of identifying information about a juvenile when:

- The court finds, in a written order, that (1) a petition has been filed alleging that the juvenile committed a felony at age 13 or older, and (2) based on the juvenile’s record or alleged offense(s), that the juvenile presents a danger to self or others, and (3) good cause exists for the disclosure, or
- It is determined that exigent circumstances exist and the Division of Juvenile Justice (the “Division”) or a law enforcement agency within NC releases the information. If information is released as a result of a determination that exigent circumstances exist, the entity that released the information must seek a court order for the release of the information as soon as reasonably practicable, but no later than the first available session of a court in the county after the release of the information. If the court does not order release of the information, all previously released information must be removed from any publicly available website or social media account controlled by the Division or law enforcement agency.

When disclosure is allowed, the Division or any law enforcement agency in NC may publicly release:

- The juvenile’s first and last name and photograph,
- Any offense alleged in the petition filed against the juvenile,
- Whether a secure custody order has been issued for the juvenile,
- A statement as to the juvenile’s threat to self or others, based on the juvenile’s record or the nature of the alleged offense and the level of concern of the Division or law enforcement agency.

The Division or law enforcement agency must make a reasonable effort to notify a parent, legal guardian, or custodian of the juvenile before publicly releasing the information about the juvenile. If the court orders disclosure and the juvenile is taken into custody before information is publicly disclosed, the information shall not be publicly disclosed. If the juvenile is taken into custody after information is publicly disclosed, whether by court order or as the result of exigent circumstances, all released information must be removed from any publicly available website or social media account controlled by the Division or law enforcement agency.

Interrogation procedures. Effective for offenses committed on or after December 1, 2023, section 3 of this act amends G.S. 7B-2101 to add a new subdivision (a1) outlining the rights that juveniles age 16 and 17 have during a custodial interrogation. The right to have a caretaker present during a custodial interrogation is added to the existing list of rights.

G.S. 7B-2101 is further amended to add a new subdivision (a2), stating the if a juvenile who is 16 or 17 invokes their right to have a parent, guardian, or custodian present during questioning, law enforcement must make a reasonable effort to contact that person. If the parent, guardian, or custodian is not available, a caretaker can be present during questioning.

The act also adds new subdivision (e) to G.S. 7B-2101, defining who is a caretaker for the purpose of new subdivision (a1). This definition is the same definition of caretaker contained in G.S. 7B-101(3) and includes: “any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, a foster parent, an adult member of the juvenile's household, an adult entrusted with the juvenile's care, a potential adoptive parent during a visit or trial placement with a juvenile in the custody of a department, any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility, or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services.

Other juvenile justice modifications. Effective for offenses committed on or after December 1, 2023, section 4 of this act amends G.S. 7B-1806 to clarify that a juvenile summons may be served by a law enforcement officer or a juvenile court counselor and to add that a defense of lack of personal jurisdiction or insufficiency of service is waived if a parent, guardian, or custodian and the juvenile avail themselves to the court and do not raise an objection at the initial court appearance.

Section 4 of the act also amends G.S. 7B-2502 to make the following changes to the option to order evaluation and treatment prior to disposition, to the requirements that the court order a comprehensive clinical assessment (CCA) in certain cases, and to the mandate that the court consider whether a care review team must be convened in certain cases:

- Adds language to authorize the court to hold a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological or other evaluation or treatment after completion of a court-ordered examination to determine the needs of the juvenile. The court may order the juvenile to comply with any evaluation or treatment recommended by the examination.
- Adds language to clarify that the obligation to order DJJ to make a referral for a CCA applies to a juvenile who has been identified with a suspected mental illness through the use of a validated screening instrument or other evidence presented to the court. The statute also continues to apply to a juvenile with a suspected developmental disability or intellectual disability.
- Changes the mandate that the court order DJJ to make a referral for a CCA from within 45 days before the adjudication hearing to within 90 days before the disposition hearing.
- Requires the court to review all CCA's (or their equivalent) to determine if the statutory criteria for ordering DJJ to convene a care review team exist. This includes all CCA's ordered

by the court and all CCA's that were completed within 90 days of the disposition hearing (and therefore not ordered by the court).

The act further amends G.S. 7B-2204 to allow a juvenile who has been convicted and sentenced to an active sentence, following transfer of their case to superior court for trial as an adult, to be held in a juvenile detention facility pending transfer to the Division of Prisons.

Juvenile capacity to proceed. Effective for offenses committed on or after January 1, 2025, section 5 of this act replaces current G.S. 7B-2401 and adds new G.S. 7B-2401.1 – 2401.5 to establish a juvenile standard and procedure for determining capacity to proceed. In short:

- New G.S. 7B-2401.1 defines relevant terms including “developmental immaturity” and “incapacity to proceed”.
- New G.S. 7B-2401.2 details the procedure to determine capacity and the hearing procedure.
- New G.S. 7B-2401.3 establishes a new credentialing process for juvenile forensic evaluators, details information that must be released to the forensic evaluator, addresses what must be considered during the forensic evaluation and included in the report, and tasks the North Carolina Administrative Office of the Courts with establishing reasonable reimbursement guidelines for the forensic evaluation and any related court appearances.
- New G.S. 7B-2401.4 establishes a remediation process that may be used when the court finds that the juvenile lacks capacity to proceed and is substantially likely to attain capacity in the foreseeable future. The purpose of remediation is for the juvenile to attain capacity to proceed.
- New G.S. 7B-2401.5 provides statutory authority for the court to conduct a hearing to determine if the juvenile meets the criteria for involuntary commitment when the court finds that the juvenile does not have capacity to proceed and is not likely to attain capacity in the foreseeable future. It also requires that the court dismiss the petition after finding that the juvenile lacks capacity to proceed and is not likely to attain capacity in the foreseeable future. The prosecutor may voluntarily dismiss any allegations in the petition with leave as long as the juvenile is within the age limit for juvenile jurisdiction. Records regarding the juvenile's capacity must be sealed after the conclusion of the capacity hearing or after the juvenile is found not to be substantially likely to restored to or attain capacity on the foreseeable future.

Section 5 of this act also amends G.S. 7B-1906 is amended to add a new subdivision (b3) establishing that secure custody hearings must be held every 30 days after the question of capacity is raised. Ongoing hearings can be held every 10 days on the juvenile's request and for good cause shown. Ongoing secure custody hearings can be waived with the consent of the juvenile.

Secure custody order modifications. Effective for offenses committed on or after December 1, 2023, section 6 of this act amends G.S. 7B-1904 to (1) add a juvenile court counselor as a person who can assume custody of a juvenile as the result of the issuance of a secure custody order, and (2) authorize issuance of an initial secure custody order after filing of a petition and before the juvenile has been served with that petition. The petition must be served on the juvenile within 72 hours after the juvenile is detained.

Section 6 of this act also adds a new G.S. 7B-1904.5 to include language, previously contained in G.S. 7B-1904, regarding law enforcement exemption from liability for executing a secure custody order that is complete and regular on its face. The new statute adds language detailing when law enforcement can enter a private premises or vehicle, and use force during such entry, in order to take a juvenile into custody pursuant to a secure custody order. The language mirrors language in G.S. 15A-401(e), applicable when law enforcement is arresting an adult.

Note: This summary was provided by faculty member Jacquelyn Greene. For further discussion, see Jacquelyn Greene, [Changes Coming to Delinquency Procedure: Transfer and Mental Health Evaluations](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Sept. 26, 2023).

20) [S.L. 2023-121 \(S 492\): Adult correction and law enforcement.](#) Effective for offenses committed on or after December 1, 2023, section 1 of this act amends G.S. 15A-1343(b) to include as a regular condition of probation submission to drug and alcohol screening rather than supplying a breath, urine, or blood specimen. Section 2 of this act amends G.S. 15A-1343(b), -1368.4(e), and -1374(b) to include prohibition of firearm ammunition as a regular condition of probation, post-release supervision, and parole.

Early transfers. Effective for transfers occurring on or after October 1, 2023, section 3 of this act adds new subsection (g) to G.S. 15A-1352, providing that a person serving a sentence in the Department of Adult Correction who is subject to an outstanding sentence, detainer, or other lawful process authorizing detention may be transferred up to five days before the expiration of the person's current sentence, and the remainder of the person's current sentence may be served in the custody of the requesting local confinement facility or the requesting federal agency. Early transfers conducted under this section must only be conducted at the request and expense of the receiving local confinement facility or the receiving federal agency. The provision further specifies that it does not authorize holding a person beyond the release date of the current sentence absent an outstanding sentence to be served, detainer, or service of other lawful process authorizing detention.

Carrying concealed weapons. Effective for designations made on or after September 22, 2023, section 7 of this act amends G.S. 14-269(b) to designate Department of Adult Correction (DAC) employees as persons authorized to carry concealed weapons. The DAC employees must (i) have been designated in writing by the Secretary of the Department, (ii) have a valid concealed handgun permit, and (iii) have in their possession written proof of the designation by the Secretary of the Department. The provision also specifies that the DAC employees must not carry a concealed weapon at any time while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body.

Firearms training exemption. Effective for permit applications submitted on or after September 22, 2023, section 11 of this act amends G.S. 14-415.12A to include qualified correctional officers and qualified State probation or parole certified officers as officials exempt from the firearms safety and training course required under G.S. 14-415.12(a)(4). The section also amends G.S. 14-415.10 to define "qualified correctional officer" and "qualified State probation or parole certified officer."

Probation officers' delegated authority in DWI cases. Effective for offenses committed on or after December 1, 2023, section 13 of this act amends G.S. 20-179 to enact new subsection (k5). The new

subsection authorizes the Division of Community Supervision and Reentry of the Department of Adult Correction to require an offender sentenced to Aggravated Level One or to Level One, Two, Three, Four, of Five punishment for impaired driving violations and placed on supervised probation to do any of the following:

- (1) Perform up to 20 hours of community service and pay the applicable fee.
- (2) Report to a probation officer on a frequency determined by the officer.
- (3) Submit to substance abuse assessment, monitoring, or treatment.
- (4) Submit to house arrest with electronic monitoring.
- (5) Submit to period of confinement in a local confinement facility for up to six days per month during a period of three months, as specified.
- (6) Submit to a curfew.
- (7) Participate in an educational or vocational skills development program.

The amended statute further authorizes the Division to reduce or remove requirements it imposes, allows probation officers to exercise authority delegated by the court after administrative review and approval by a chief probation officer, and provides for offenders to motion the court to review probation officers' actions. Offenders must be given notice of this right, but the offender has no right of review if the offender has signed a written waiver of rights.

Prior to exercising delegated authority, the Division must determine that the offender has failed to comply with a condition of probation or is high-risk based on a validated instrument to assess risks of reoffending. The Division may only impose the confinement condition if the Division determines the offender has violated a condition of probation. The amended statute clarifies that it does not affect the arrest and hearing procedures authorized under G.S. 15A-1345 for probation violations.

Fingerprinting for misdemeanor crime of domestic violence. Effective for offenses committed on or after December 1, 2023, section 15 amends G.S. 15A-502(a2) to include G.S. 14-32.5 (misdemeanor crime of domestic violence) as an offense requiring fingerprinting by the arresting law enforcement agency and forwarding of those fingerprints to the State Bureau of Investigation.

- 21) [S.L. 2023-123 \(S 189\)](#): Drug trafficking.** Effective for offenses committed on or after December 1, 2023, section 1 of this act amends G.S. 90-95(h)(4) to increase the fines for trafficking in opium, opiate, opioid, or heroin. Where the controlled substance is heroin, fentanyl, or carfentanil, or any salt, compound, derivative, or preparation thereof, or any mixture containing any of these substances, the amended statute provides:
- If the amount is between 4 and 14 grams (a Class F felony), the fine is \$500,000. The fine remains no less than \$50,000 for any other controlled substance violations under G.S. 90-95 that would be classified as a Class F felony.
 - If the amount is more than 14 grams but less than 28 grams (a Class E felony), the fine is \$750,000. The fine remains no less than \$100,000 for any other controlled substance violations under G.S. 90-95 that would be classified as a Class E felony.
 - If the amount is 28 grams or more (a Class C felony), the fine is \$1 million. The fine remains no less than \$500,000 for any other controlled substance violations under G.S. 90-95 that would be classified as a Class C felony.

Death by distribution. Effective for offenses committed on or after December 1, 2023, section 2 of this act amends G.S. 14-17 by removing subsection (b)(2) which punished as second-degree murder and a Class B2 felony any murder by unlawful distribution of certain drug that causes death of the user. The act amends G.S. 14-18.4 to create new offenses for death by distribution through unlawful delivery of certain controlled substances. Under new G.S. 14-18.4(a1), a person is guilty of death by distribution through unlawful delivery of certain controlled substances if: (1) the person unlawfully delivers at least one certain controlled substance; (2) the ingestion of the certain controlled substance or substances causes the death of the user; and (3) the commission of the offense was the proximate cause of the victim's death. The offense is a Class C felony. Under new G.S. 14-18.4(a2), A person is guilty of death by distribution through unlawful delivery with malice of certain controlled substances if: (1) the person unlawfully delivers at least one certain controlled substance; (2) the person acted with malice; (3) the ingestion of the certain controlled substance or substances causes the death of the user; and (4) the commission of the offense was the proximate cause of the victim's death. The offense is a Class B2 felony.

The amended statute also increases the penalty for a violation of G.S. 14-18.4(b) to a Class B2 felony, increases the penalty for a violation of G.S. 14-18.4(c) to a Class B1 felony, and removes the requirement that a person did not act with malice as an element of each offense. For G.S. 14-18.4(c), the amended statute increases the lookback time for previous identical or similar convictions from 7 years to 10 years.

For further discussion, see Jeff Welty, [Changes to the Death by Distribution Law](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Sept. 28, 2023).

22) [S.L. 2023-127 \(S 579\): Offenses against public morality and decency.](#) Effective for offenses committed on or after December 1, 2023, section 1 of this act amends G.S. 14-190.1 to punish a knowing violation of the statute in the presence of a minor under 18 years of age as a Class H felony. Any other violation of the statute is a Class I felony. Section 3 of the act amends other provisions of the statute to clarify that the offense is committed by a person 18 years of age or older.

Effective for orders of restitution entered on or after December 1, 2023, section 2 of this act enacts new G.S. 14-190.17B, providing restitution for sexual exploitation of a minor. Under the new statute, the court must determine the full amount of the victim's losses for costs incurred as a proximate result of the offense, including (1) medical services relating to physical, psychiatric, or psychological care; (2) physical and occupational therapy or rehabilitation; (3) transportation, temporary housing, and child care expenses; (4) loss of income; and (5) reasonable attorneys' fees and other litigation costs associated with the order of restitution or its enforcement. If more than one defendant contributed to the losses of the victim, the court must apportion liability among the defendants to reflect the level of contribution of each defendant to the victim's losses. Where it is impossible to trace a particular amount of the determined losses to the defendant, the court must order restitution in an amount that, in the court's discretion, reflects the defendant's relative role in the causal process that underlies the victim's full amount of loss.

Effective for offenses committed on or after December 1, 2023, section 3 of the act:

- Increases the punishment for a violation of G.S. 190.6 from a Class I felony to a Class H felony.
- Increases the punishment for a violation of G.S. 190.7 from a Class I felony to a Class H felony.

- Increases the punishment for a violation of G.S. 190.8 from a Class I felony to a Class G felony.
- Amends the language of G.S. 14-190.9 to protect minors as defined in G.S. 14-190.13.

23) [S.L. 2023-128 \(H 142\)](#): **Sex offenses against students. Effective for offenses committed on or after December 1, 2023, section 1 of this act amends G.S. 14-27.32 to increase the penalty for sexual activity with a student from a Class I to a Class G felony and to define “student” as a person enrolled in kindergarten, or in grade one through grade 12 in any school within six months of any violation of the statute. The act also amends G.S. 14-202.4 to increase the penalty for taking indecent liberties with a student from a Class I to a Class G felony and to amend the definition of “student” to include those who enrolled in any school within six months of any violation of the statute.**

24) [S.L. 2023-129 \(H 125\)](#): **Protecting health care workers from violence. Effective for offenses committed on or after December 1, 2023, section 8.2 of this act amends G.S. 14-34.6 to include protections for hospital employees, medical practice employees, health care providers, and individuals under contract to provide services at a hospital or medical practice. The punishment for assault under this statute is increased from as Class G felony to a Class F felony if the person (i) inflicts serious bodily injury or (ii) uses a deadly weapon other than a firearm. The punishment is increased from a Class E felony to a Class D felony if the person uses a firearm.**

Section 8.2 of this act also amends G.S. 14-16.6(c) by increasing the punishment for assault on an executive, legislative, or court officer from a Class F felony to a Class E felony. G.S. 14-16.10(1) is amended to include in the definition of a “court officer” any attorney or other individual employed by, contracted by, or acting on behalf of a county department of social services.

Section 8.3 of this act amends G.S. 15A-1340.16 to include the following as aggravating factors for sentencing: (i) the defendant committed the offense on the property of a hospital as defined in G.S. 131E-76. (ii) The defendant committed the offense on the property of a medical practice which is defined as a professional corporation organized under or subject to Chapter 55B of the General Statutes and registered with the North Carolina Medical Board.