2017 Legislation Affecting Criminal Law and Procedure

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Below are summaries of 2017 legislation affecting criminal law and procedure. The summaries of motor vehicle legislation were prepared by Shea Denning. To obtain the text of the legislation, click on the link provided below or go to the North Carolina General Assembly's website, www.ncleg.net. (Once there, click on "Session Laws" on the right side of the page and then "2017-2018 Session" under "Browse Session Laws.") Be careful to note the effective date of each piece of legislation.

1. **S.L. 2017-3 (H 100): Restore partisan primary and general elections for North Carolina superior and district court judges.** Effective for primaries held on or after January 1, 2018, various amendments to G.S. Chapters 18C and 163 restore partisan judicial primary and general elections for North Carolina superior and district court judges (currently, there are partisan elections for North Carolina appellate justices and judges). New G.S. 163-122(a)(5) provides that if the office is for a superior or district court judgeship, a written petition to run as an unaffiliated candidate must be filed with the State Board of Elections before 12 noon on the second Wednesday before the primary election and must be signed by qualified voters of the district equal in number to two percent of the total number of registered voters in the district as reflected by the voter registration records as of January 1 of the year in which the general election is to be held.

2. **S.L. 2017-7 (H 239): Reduce number of judges on North Carolina Court of Appeals to twelve; modify appellate review.** Amended G.S. 7A-16, effective April 26, 2017, provides that effective January 1, 2017, whenever the seat of an incumbent judge of the North Carolina Court of Appeals becomes vacant before the expiration of the judge's term, that seat is abolished until the total number of the Court of Appeals seats is decreased to twelve. New G.S. 7A-27(a)(4), effective April 26, 2017, provides that appeal lies of right directly to the Supreme Court of a trial court's decision concerning class certification under G.S. 1A-1, Rule 23. New G.S. 7A-27(a)(5), effective for appeals filed on or after January 1, 2019, provides that appeal lies of right directly to the Supreme Court of an order that terminates parental rights or denies a petition or motion to terminate parental rights. New G.S. 7A-31(b)(5), effective April 26, 2017, provides that certification may be made by the Supreme Court before determination of the cause by the Court of Appeals when in the opinion of the Supreme Court the subject matter of the appeal is important in overseeing the jurisdiction and integrity of the court system.

3. **S.L. 2017-10 (S 131): Regulation and disposition of certain reptiles.** This 44-page session law contains miscellaneous provisions described in the title as providing regulatory relief to North Carolina's citizens. Of direct interest to the criminal justice community are the changes in pages 30-31 of the session law, all effective May 4, 2017, involving the regulation and disposition of certain reptiles under Article 55 of G.S. Chapter 14. Amended G.S. 14-419(a) makes clear that when a law enforcement officer determines there is an immediate risk to public safety, the officer is not required to consult with the N.C. Museum of Natural Sciences (museum) or the N.C. Zoological Park (zoo) and may kill the reptile. Amended G.S. 14-419(b) provides that when the museum or zoo or their designated representative determines euthanasia to be the appropriate interim disposition, or when a reptile seized pursuant to statute dies of natural or unintended causes, the museum, zoo, or designated representative is not liable to the reptile's owner. New G.S. 14-419(b1) provides that upon conviction of any offense in Article 55, the court must order a final disposition of the

confiscated venomous reptiles, large constricting snakes, or crocodilians, which may include the transfer of title to the State of North Carolina and reimbursement for the necessary expenses incurred in the involved seizure, delivery, and storage. The Department of Natural and Cultural Resources and the Wildlife Resources Commission are required to jointly study and develop a list of potential designated representatives for the storage and safekeeping of venomous reptiles, large constricting snakes, or crocodilians. These two entities must also jointly study and develop recommendations for potential procedural and policy changes to improve the regulation of reptiles under Article 55, and submit a report, including any legislative recommendations, to the Environmental Review Commission no later than December 31, 2017.

4. S.L. 2017-16 **(S 547): Remission of restitution; notice and hearing required.** New G.S. 15A-1340.39, effective for orders of remission entered on or after December 1, 2017, provides that a court may not remit all or part of an order of restitution entered under G.S. 15A-1340.34 without providing notice and an opportunity to be heard to the district attorney and the victim, victim's estate, or any other entity to which the order directs restitution to be paid. The court must send notice by first-class mail to the people or entities described above concerning (1) the date and time of the hearing, and (2) the right to be heard and make an objection to the remission of all or part of the order of restitution, at least 15 days before the hearing. If the court finds that the remission of the order is warranted and serves the interests of justice, the court may remit the order. The remission of the order does not abridge the right of the victim or the victim's estate to bring a civil action against the defendant for damages arising from the defendant's commission of the offense.

5. S.L. 2017-22 **(S 53): Authorizing law enforcement officer to take custody of a child when the court determines that the child is in danger.** Amended G.S. 50A-311(e) provides that if a court finds based on testimony of the petitioner or other witness that a less intrusive remedy is not "available" (current law states "effective"), the court may authorize law enforcement officers to enter private property to take physical custody of the child. New provisions to this statutory subsection provide that: (1) an officer executing a warrant to take physical custody of the child that is complete and regular on its face is not required to inquire into the regularity and continued validity of the order; and (2) an officer executing the warrant does not incur criminal or civil liability for its service. New G.S. 50-13.3(c) provides that notwithstanding G.S. 50-13.3(a) and (b), a warrant to take physical custody of a child issued by a court under G.S. 50A-311 is enforceable throughout the state. Amended G.S. 50-13.5(d)(3) provides that a temporary custody order that requires a law enforcement officer to take physical custody of a minor child must be accompanied by a warrant to take physical custody of a minor child as set forth in G.S. 50A-311. This session law applies to orders for temporary custody on or after October 1, 2017.

6. S.L. 2017-30 **(H 125): Adding the threatened use of a weapon to one of the elements of first-degree forcible rape and first-degree forcible sexual offense.** Amended G.S. 14-27.21(a)(1) adds the threatened use of a dangerous or deadly weapon to the elements of first-degree forcible rape and also substitutes the word "uses" for "employs." The same changes are made to the crime of first-degree forcible sexual offense in G.S. 14-27.26(a)(1). This session law is effective for offenses committed on or after December 1, 2017.

7. S.L. 2017-31 **(H 225): Making clear that attempted armed robbery is a lesser-included offense of armed robbery.** Amended G.S. 14-87 provides that attempted armed robbery is a lesser-included offense of armed robbery, and evidence sufficient to prove armed robbery is sufficient to support a conviction of attempted armed robbery. This session law is effective for offenses committed on or

after December 1, 2017. For a further discussion of this issue, see Jeff Welty, Convictions for Attempted Armed Robbery Based on Evidence of the Completed Crime, N.C. Crim. L., UNC Sch. of Gov't Blog (July 10, 2017).

8. **S.L. 2017-42 (S 5): Authorizing Mecklenburg County to extend police powers to municipalities in addition to the City of Charlotte.** Effective June 22, 2017, this local act amends S.L. 1969-1170 (H 1366) to authorize Mecklenburg County and any municipality in the county to enter into an agreement to extend the powers of the municipality's police officers throughout the municipality's extraterritorial jurisdiction as defined in G.S. 160A-360. The agreement must be made before the exercise of the powers. The act states that it does not restrict the Mecklenburg County Sheriff's Office from exercising its powers and does not allow municipal police officers to exercise any power outside their jurisdiction that they cannot exercise within their jurisdiction. The act continues to allow Mecklenburg County and the City of Charlotte to enter into an agreement to extend the powers of Charlotte police officers throughout Mecklenburg County.

9. **S.L. 2017-54 (H 385): Hunting and fishing while impaired on another's property in Orange County.** Effective June 27, 2017, this local act amends S.L. 2007-264 (S 473) to prohibit hunting and fishing while impaired on another's property in Orange County as well as in the previously covered counties (Caswell, Johnston, and Stanly counties).

10. **S.L. 2017-57 (S 257): Substantive provisions in state budget.** This summary addresses substantive changes involving criminal law and procedure in the state budget act. It does not discuss funding, organizational, or staffing changes. The pertinent sections of the act are indicated below.

    Crime victims. Effective June 28, 2017, section 16.6 amends G.S. 15B-2(1), a part of the Crime Victims Compensation Act, to provide that reasonably needed services for which compensation is allowable include counseling for immediate family members of children under age 18 who are victims of rape, sexual assault, or domestic violence and family counseling and grief counseling for immediate family members of homicide victims. The limit on such counseling services is $3,000 per family.

    Assault on hospital security personnel. Effective for offenses committed on or after December 1, 2017, section 16B.3 amends G.S. 14-34.6, which makes it a Class I felony to commit an assault or affray on emergency medical technicians and providers, medical responders, hospital personnel, and firefighters, to add hospital security personnel to the list of covered personnel. Under the statute, such an affray or assault is a Class H or Class F felony if other factors are present, such as the use of a deadly weapon.

    Law enforcement authority and duties. Effective June 28, 2017, section 16B.4 adds G.S. 20-189.1 creating the Executive Protection Detail within the Highway Patrol, consisting of three officers to protect the Lieutenant Governor and immediate family. Effective July 1, 2017, section 16B.9 adds G.S. 20-189.2 allowing the Speaker of the House and President Pro Tem of the Senate to request a security detail while traveling within the state on state business.

    Effective June 28, 2017, section 16B.10 expands G.S. 143B-919(c) to authorize the State Bureau of Investigation, on request of the Governor or Attorney General, to investigate violations of G.S. 14-43.11 (human trafficking) and G.S. 14-288.21 through 14-288.24 (offenses involving nuclear, biological, and chemical weapons of mass destruction).

    Effective June 28, 2017, section 17.2 amends G.S. 17E-6 to authorize company police agencies to enter into mutual aid agreements with municipalities and, with the county sheriff's consent, a county to the same extent as a municipal police department. The amended statute also provides that company policy may provide temporary assistance to a law enforcement agency at the request

of the head of that agency whether or not a mutual aid agreement is in place. In providing temporary assistance, a company police officer has the same powers as law enforcement officers of the agency requesting temporary assistance but may not initiate or conduct an independent investigation into matters outside their subject matter or territorial jurisdiction.

Section 17.7 requires every local law enforcement agency to conduct an inventory of sexual assault evidence collection kits in its custody or control and report its findings to the State Crime Laboratory by January 1, 2018, including the total number of kits that have not undergone forensic testing.

Juvenile justice. Section 16D.4, entitled the Juvenile Justice Reinvestment Act, contains the statutory changes raising the age of juvenile jurisdiction from 16 to 18 and other changes to the juvenile justice statutes. For a detailed summary of these changes, see LaToya Powell, Juvenile Justice Reinvestment Act.

Human trafficking. Effective January 1, 2018 (pursuant to Section 5.8 of the technical corrections act to the budget act, S.L. 2017-197 (H 528)), section 17.4 requires the following entities under the indicated statutes to display a sign provided by the North Carolina Human Trafficking Commission that contains the National Human Trafficking Resource hotline information: adult establishments (G.S. 14-202.13); ABC permittees (G.S. 18B-1003(c1)); places described in G.S. 19-1.2 involving lewd films, lewd publications, and other acts declared to be nuisances (G.S. 19-8.4); hospitals, (G.S. 131E-84.1); transportation stations, rest areas, and state welcome centers (G.S. 143B-348); and JobLink and other centers offering employment and training services (G.S. 143B-431.3). The section does not specify penalties for a violation.

New court costs. Effective June 28, 2017, section 18B.5 amends G.S. 7A-304(a) to create the following additional court costs on conviction:

- $600 for the services of the State Crime Lab if as part of the investigation leading to conviction the Crime Lab performed digital forensics, to be remitted to the Department of Justice for support of the Crime Lab;
- $600 for the services of a local crime lab operated by a local government if as part of the investigation leading to conviction the local lab performed digital forensics and the court finds that the work by the local lab is the equivalent of the work performed by the State Crime Lab, to be remitted to the local law enforcement unit for lab purposes;
- $600 for the services of an expert witness employed by the State Crime Lab who completes a digital forensic analysis and testifies at trial, which is in addition to the new $600 cost for the performance of the digital forensics and is to be remitted to the Department of Justice for support of the Crime Lab; and
- $600 for the services of an expert witness employed by a local crime lab operated by a local government who completes a digital forensic analysis and testifies at trial, which is in addition to the new $600 cost for the performance of the digital forensics and is to be remitted to the local government unit for support of the lab.

Restrictions on remission of fines and costs. Effective for cases arising on or after December 1, 2017, section 18B.6 amends G.S. 7A-304(a) to prohibit a court from waiving or remitting any court fines or costs without providing notice and an opportunity to be heard by all government entities directly affected. At least 15 days ahead of time, the court must give notice by first-class mail to the government entities of the date and time of the hearing and the right to be heard and object.

Criminal record checks. Effective July 1, 2017, section 32.1 adds G.S. 143B-967 to authorize the Department of Public Safety to provide to the Department of Revenue a criminal history for current and prospective employees, contractors, employees of contractors, and any other person engaged by the Department of Revenue who will have access to federal tax information.

11. **S.L. 2017-69 (S326): Misrepresentation offenses in connection with automobile insurance.** Effective July 1, 2017, the act eliminates from G.S. 58-2-164(b)(1) and (2) the provisions making it a Class 3 misdemeanor to present or assist another to present in connection with vehicle registration false or misleading information that the applicant is an eligible risk when the applicant is not an eligible risk. The amended statutes continue to make it a Class 3 misdemeanor to present such information in support of an application for automobile insurance. The act also enacts new G.S. 20-53.5 to require DMV to register and title high-mobility multipurpose wheeled vehicle (HMMWVs or Humvees) when certain conditions are met**.**

12. **S.L. 2017-77 (S 217): Discharging firearm or bow and arrow from right of way in Richmond County.** Effective for offenses committed on or after October 1, 2017, this local act makes it a Class 3 misdemeanor to discharge a firearm or bow and arrow, or to attempt to do so, from, on, across, or over the roadway or right-of-way in Richmond County. The prohibition does not apply to unpaved roads within the Wildlife Resources Commission's Sandhills Game Land.

13. **S.L. 2017-87 (S 155): Changes to Alcoholic Beverage Control (ABC) Commission laws.** This act does not specifically deal with criminal provisions, but by loosening various alcohol restrictions makes conduct lawful that could previously be punished as a Class 1 misdemeanor under G.S. 18B-102(b), the general punishment provision for violations of Chapter 18B. The changes are effective June 30, 2017, unless otherwise noted.
    - Effective July 1, 2017, distilleries may sell up to five bottles of spirituous liquor (was, one bottle) to a consumer per 12 month period. G.S. 18B-1105(5).
    - Certain permittees, including distilleries, may conduct consumer tastings as provided in new G.S. 18B-1114.7. An authorized tasting does not violate G.S. 18B-301(f), which otherwise prohibits consumption or offering of spirituous liquor on any public road, street, highway, or sidewalk.
    - A licensed auctioneer may obtain a permit to sell at auction wine, decorative decanters of spirituous liquor, or antique spirituous liquor. G.S. 18B-603(f)(10), G.S. 18B-1002.1. A collector may obtain a permit authorizing the person to bring into the state, transport, or collect a greater amount of the above beverages and to sell those beverages as prescribed by the ABC Commission (was, first two beverages only). G.S. 18B-1002(a)(4).
    - Cities, counties, and the Eastern Band of Cherokee Indians may adopt ordinances allowing the sale of malt beverages, unfortified wine, fortified wine, and mixed beverages beginning at 10:00 a.m. on Sundays pursuant to a licensed premises' permit. G.S. 18B-1004(c), G.S. 153A-145.7, G.S. 160A-205.3, G.S. 18B-112(b1).
    - Retail permittees may sell for consumption off premises malt beverages and unfortified wine in cleaned and sanitized containers that are filled and sealed for consumption off premises. G.S. 18B-1001(1–4, 16). Although not in the amended provisions and therefore not part of the law, the title of this section of the act states that the changes authorize the sale of "crowlers," oversized cans that can be filled and sealed for later consumption.
    - A retail business may obtain an on-premises unfortified wine permit. G.S. 18B-1001(3)j.
    - A holder of a brewery permit may give its products to customers, visitors, and employees (was, employees and guests) for consumption on the premises. G.S. 18B-1104(6). The title of this section of the act states that it authorizes tastings during brewery tours.

- A commercial permittee may consume samples of alcoholic beverages it is licensed to sell, free of charge, on its premises for purposes of sensory analysis, quality control, or education.
- Home brewers have been allowed to make and use wines and malt beverages according to certain specification as to their makeup. Amended G.S. 18B-306 continues to allow individuals to make, possess, and transport wine and malt beverages but removes those specifications. In addition to allowing consumption by the individual, family, and guests, the amended statute allows use at organized affairs, exhibitions, or competitions. A permit is not required. Sale is prohibited.
- A brewery permittee may sell, in addition to its malt beverages, other approved alcoholic beverages. G.S. 18B-1104(7)c.
- In an area where the sale of malt beverages is not authorized, a brewery that produces agricultural products used by the brewery to manufacture malt beverages may sell the malt beverages at the brewery for on- or off-premises consumption with an appropriate permit and approval from the governing body of the city or county where the brewery is located. G.S. 18B-1104(7a).
- The holder of certain winery permits may give free tastings and sell its wine at farmers markets in addition to the locations listed in G.S. 18B-1114.1.

14. S.L. 2017-89 **(H 98): Intentional injury to or interference with firefighting and emergency medical services equipment.** Effective for offenses committed on or after December 1, 2017, the act adds G.S. 14-160.3 to make it a Class 1 misdemeanor if a person:
    - intentionally
    - injures, destroys, removes, vandalizes, tampers with, or interferes with the operation of
        - any machinery, apparatus, or equipment used by a fire department or North Carolina Forest Services for fighting fires or protecting human life or property, or
        - any ambulance, rescue squad emergency medical services vehicle, or equipment or apparatus used for emergency medical services as defined in G.S. 131E-155.

15. S.L. 2017-92 **(H 343): Domestic violence protective orders.** Under G.S. 1-294, an appeal stays all further proceedings in the court below regarding the judgment appealed from (although not other maters included in the action and not affected by the judgment). Effective October 1, 2017, the act adds G.S. 50B-4(g) to provide that notwithstanding G.S. 1-294, a valid domestic violence protective order is enforceable in the trial court during the pendency of the appeal—for example, by contempt for a violation. The new provision provides that the appellate court in which the appeal is pending may stay a trial court order until the appeal is decided if justice so requires. The act also adds G.S. 50B-3(b2) to provide that a court may modify a domestic violence protective order on written request of either party at a hearing after notice or service of process and on a finding of good cause.

16. S.L. 2017-93 **(H 399): Disclosure of private images without consent.** Effective for offenses committed on or after December 1, 2017, the act amends G.S. 14-190.5A to broaden the circumstances in which disclosure of private images is a crime. G.S. 14-190.5A(b) lists five elements of the offense. The fifth element, in subdivision (5), was that the person disclosed the image under circumstances that the person knew or should have known that the depicted person had a "reasonable expectation of privacy," a term that applied only when a person had a personal relationship as defined G.S. 50B-1(b). The revised element is that the person obtained the image

without consent of the depicted person or under circumstances that the defendant knew or should have known that the depicted person expected the images to remain private. The act deletes the requirements of a personal relationship and reasonable expectation of privacy and deletes those terms from the definitions in G.S. 14-190.5A(a). The definition of "image" is also broadened to include live transmissions and any reproduction made by electronic, mechanical, or other means. The act directs the Joint Legislative Oversight Committee on Justice and Public Safety to study the issue of improper disclosure of an image of a person superimposed onto another image of exposed intimate parts or sexual conduct, including whether existing crimes or civil actions apply and whether G.S. 14-190.5A should be further amended to include superimposed images. For a further discussion of this act, see Jeff Welty, Important Amendments to the "Revenge Porn" Statute, N.C. Crim. L., UNC Sch. of Gov't Blog (July 17, 2017).

17. **S.L. 2017-94 (S 600): Domestic violence homicide.** Effective for offenses committed on or after December 1, 2017, the act adds G.S. 14-17(a1) to provide that there is a "rebuttable presumption" that a murder is willful, deliberate, and premeditated and is a Class A felony—that is, first-degree murder—if the following circumstances are present:
    - the murder was perpetrated with malice as described under G.S. 14-17(b)(1), which defines malice for purposes of that subdivision as "an inherently dangerous act or omission, done in such a reckless and wanton manner as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief";
    - the murder was committed against a spouse, former spouse, a person with whom the defendant lives or has lived as if married, a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), or a person with whom the defendant shares a child in common; and
    - the defendant has previously been convicted of one of the following offenses involving the same victim
        - an act of domestic violence as defined in G.S. 50B-1(a),
        - a violation of a domestic violence protective order under G.S. 50B-4.1 or G.S. 14-269.8 if the same victim is the subject of the protective order,
        - communicating a threat under G.S. 14-277.1,
        - stalking under G.S. 14-277.3A,
        - cyberstalking under G.S. 14-196.3, or
        - domestic criminal trespass under G.S. 14-134.3.

    The legislation is referred to as Britny's Law in memory of Britny Jordan Puryear, a Fuquay-Varina woman who was killed by her boyfriend in 2014.

18. **S.L. 2017-95 (H 21): Driver instruction on law enforcement procedures during traffic stops.** Effective January 1, 2018, the act requires the Division of Motor Vehicles to include in the driver license handbook a description of law enforcement procedures during a traffic stop and the actions a motorist should take during a traffic stop, including appropriate interactions with law enforcement officers. Effective for the 2017-18 school year, the act amends G.S. 115A-215(b) to require that the driver education curriculum include instruction on the same matters. The act requires DMV to consult with the following groups in developing the materials and instruction: North Carolina Sheriff's Association and North Carolina Association of Chiefs of Police.

19. **S.L. 2017-96 (H 27): Expiration of registration for vehicle with new registration plate.** Effective July 12, 2017, the act amends G.S. 20-66(g1) to provide that the registration of a vehicle renewed by a new registration plate expires on the last day of the year on which the registration plate was issued.

The amended provision further provides that the vehicle may be lawfully driven through February 15 of the following year.

20. **S.L. 2017-97 (H 95): Transport of cargo by oversized vehicles.** The Department of Transportation (DOT) may issue special permits allowing vehicles that exceed otherwise applicable size and weight limits to be driven on roadways maintained by the State. Effective July 12, 2017, new G.S. 20-119(b3) provides that for a special permit issued for the transport and delivery of cargo, containers, and other equipment, DOT may allow travel after sunset if it determines such travel will be safe and will expedite traffic flow. The new subsection prohibits DOT from issuing a special permit that bars travel after sunset for shipments going to or from international ports. G.S. 20-119(b3) provides that its terms do not preclude DOT from restricting movements it determines to be unsafe.

21. **S.L. 2017-101 (H 224): Identification of outstanding arrest warrants.** Effective for orders entered on or after December 1, 2017, the act amends G.S. 15A-301.1(p) to require the court to attempt to identify outstanding warrants against defendants and notify the appropriate law enforcement agencies only if the defendant is in custody. The statute was previously enacted by S.L. 2015-48 (H 570) to address the problem of unserved warrants on defendants who have other pending criminal charges. For a further discussion of the statutory requirements, see John Rubin, What to Do About Outstanding Arrest Warrants, N.C. Crim. L., UNC Sch. of Gov't Blog (Jan. 5, 2016).

22. **S.L. 2017-102 (H 229): Technical corrections act.** The act makes the following substantive changes regarding criminal law and procedure, effective July 12, 2017, unless otherwise indicated.

Sex offender registration. Section 5 of the act amends G.S. 14-208.6(5) to include first-degree statutory rape under G.S. 14-27.4 in the definition of "sexually violent offense" for purposes of sex offender registration. The act states that the change is effective December 1, 2015. For a discussion of the impact of this retroactive change on registration obligations compared to the underlying sentence, see Jamie Markham, Revised Sex Offender Flow Chart (July 2017 Edition), N.C. Crim. L., UNC Sch. of Gov't Blog (July 13, 2017).

Definition of husband and wife. Section 35 of the act amends G.S. 12-3, which contains rules of statutory construction, to add a definition for "husband and wife" and similar terms. The new provision defines such terms as including "any two individuals who are then lawfully married to each other." For example, this rule would apply to G.S. 8-57(c), which provides that no husband or wife are compellable to disclose any confidential communication made by one to the other during their marriage. Amended G.S. 12-3 also provides that the terms "widow" and "widower" mean the surviving spouse of a deceased individual.

Electric assisted bicycles. The Motor Vehicle Reinsurance Facility is an entity consisting of all insurers engaged in writing motor vehicle insurance in North Carolina. The purpose of the facility is to make liability insurance available to drivers or vehicle owners whom companies do not wish to insure as part of their regular business. Section 36 of the act amends G.S. 58-37-1(6), the definition provisions for the North Carolina Motor Vehicle Reinsurance Facility, to provide that electric assisted bicycles are not motor vehicles. Electric assisted bicycles are bicycles with two or three wheels, a seat or saddle for the rider, pedals for human propulsion, and an electric motor of no more than 750 watts. Such bicycles must have a maximum speed of not more than 20 mph on a level surface when powered solely by the motor.

Conditional discharge for marijuana drug paraphernalia. Section 38 amends G.S. 90-96(a), which authorizes a conditional discharge for certain drug-related offenses, to include possession of marijuana drug paraphernalia under G.S. 90-113.22A as well as possession of other drug paraphernalia under G.S. 90-113.22. This change also applies to conditional discharges under G.S.

90-96(a1) because that subsection covers offenses described in G.S. 90-96(a). Because the act states that the change is effective July 12, 2017, without any limiting language, an eligible defendant can obtain a conditional discharge whether the offense occurred before or after that date.

23. S.L 2017-111 **(S 160): Parking privileges for handicapped drivers.** To obtain a license plate or windshield placard that permits a vehicle to be parked in a handicapped parking place, an applicant must submit a certification by a medical professional stating that the applicant is handicapped or a similar determination by the Division of Services for the Blind or the U.S. Department of Veteran's Affairs. Effective July 12, 2017, the act amends G.S. 20-37.6(c1) to permit certifications by a licensed physician assistant or a licensed nurse practitioner in addition to a licensed physician, a licensed ophthalmologist, and a licensed optometrist. In addition, the act amends G.S. 20-37.6(c1) to permit an initial application for a temporary removable windshield placard to be accompanied by a certification from a licensed certified nurse midwife.

24. S.L. 2017-112 **(S 182): Light bars on vehicles prohibited.** Effective for offenses committed on or after October 1, 2017, new G.S. 20-130(f) prohibits a person from driving a motor vehicle on a street or highway while using a light bar lighting device, defined as a bar-shaped lighting device comprised of multiple lamps that project a beam of light of an intensity greater than 25 candlepower. Violation of this provision is an infraction. The light bar ban does not apply to motorcycles, school buses, ambulances, law-enforcement vehicles, fire department vehicles, or other types of vehicles described in G.S. 20-130(d) and G.S. 20-130.1(b). G.S. 20-130(f) does not apply to or restrict use of a light bar lighting device with strobing lights.

25. S.L. 2017-115 **(H 464): Changes to controlled substance schedules; murder by unlawful distribution of certain controlled substances; creation of opioid sentencing task force.** The following changes are effective for offenses committed on or after December 1, 2017, except that the creation of the task force is effective July 18, 2017.

Definitions. The definition of "isomer" in G.S. 90-87(14a) is revised to include any type of isomer, including structural, geometric, or optical isomers, and stereoisomers. The definition of "narcotic drug" in G.S. 90-87(17)a. is revised to include opioids in addition to opium and opiates. "Opioid" is defined in new G.S. 90-87(18a) as any synthetic narcotic drug having opiate-like activities but not derived from opium.

Opioids. Opioids are included along with opiates as a Schedule I controlled substance in revised G.S. 90-89(1) to the extent that they involve the listed chemical designations, which the act expands. The revised statute excepts levo-alphacetylmethadol, also known as levomethadyl acetate or LAAM, from the chemical designation for alphacetylmethadol, a Schedule I opiate; the substance remains a Schedule II opiate. Opioids also are designated as a Schedule II controlled substance in revised G.S. 90-90(1) and (2) to the extent that they involve the listed substances. Revised G.S. 90-90(1) modifies the definition of hydrocodone, a Schedule II controlled substance, to include any material, compound, mixture, or preparation containing any quantity of hydrocodone.

Synthetic cannabinoids. New G.S. 90-89(7) classifies synthetic cannabinoids, described in the new provision, as a Schedule I controlled substance. G.S. 90-94(3), which classified synthetic cannabinoids as a Schedule VI controlled substance, is repealed.

Section 11 of the act revises G.S. 90-95(b) to repeal the provision providing that the transfer of less than 2.5 grams of a synthetic cannabinoid for no remuneration does not constitute delivery in violation of G.S. 90-95(a)(1); and revises G.S. 90-95(d) to repeal the provisions making possession of 7 grams or less of a synthetic cannabinoid a Class 1 misdemeanor and 21 grams or less a Class I felony.

Fentanyl derivatives. Derivatives of fentanyl, described in new G.S. 90-89(1a), are added as a Schedule I controlled substance. Fentanyl remains a Schedule II controlled substance under G.S. 90-90(2).

Other Schedule I controlled substances. Various chemical designations are added in revised G.S. 90-89(3) as Schedule I hallucinogenic substances. Various chemical designations are added in revised G.S. 90-89(4) as Schedule I systemic depressants. The definition of substituted cathinones, a Schedule I stimulant described in G.S. 90-89(5)j. is revised.

Schedule III. Dihydrocodeine is a Schedule II controlled substance under G.S. 90-90(2) unless it is less than a certain quantity, in which case it is a Schedule III controlled substance under G.S. 90-91(d). The act repeals G.S. 90-91(d)3. and 4., which classified certain amounts of dihydrocodeine as a Schedule III controlled substance, but G.S. 90-91(d)5. continues to classify certain amounts of dihydrocodeine as a Schedule III controlled substance. Revised G.S. 90-91(d) also includes buprenorphine as a Schedule III controlled substance; it was a Schedule IV controlled substance under G.S. 90-92(a)(5). Revised G.S. 90-91(k) adds certain substances as Schedule III anabolic steroids.

Schedule IV. Revised G.S. 90-92(a)(1) adds certain substances as Schedule IV depressants, and revised G.S. 90-92(5) adds tramadol as a Schedule IV narcotic drug and removes buprenorphine.

Schedule V. New G.S. 90-93(a)(4) makes the listed anitconvulsants a Schedule V controlled substance.

Murder by unlawful distribution of certain substances. G.S. 14-17(b)(2) has classified as second-degree murder, punishable as a Class B2 felony, a murder proximately caused by the unlawful distribution of certain drugs, including opium, cocaine, and methamphetamine, where ingestion of the drugs caused the death of the user. The revised statute adds opiates and opioids and the depressants described in G.S. 90-92(a)(1).

Task force. The act creates the Task Force on Sentencing Reforms for Opioid Drug Convictions, consisting of 22 members appointed as provided in the act as well as ex officio members, with the same voting rights, of certain agencies. The Task Force's purpose is "to study and review cases of inmates who are incarcerated solely for convictions of opioid drug offenses that require active sentences under structured sentencing; to consider how to identify inmates who would be able to successfully reintegrate into society; and to develop and consider options for modifying existing statutes." The Task Force must submit an interim report to the General Assembly when it reconvenes in 2018 and a final report to the 2019 General Assembly. For a further discussion of efforts to address opioids, see Jeff Welty, What Is State Government Doing to Combat the Opioid Epidemic?, N.C. Crim. L., UNC Sch. of Gov't Blog (July 3, 2017).

26. S.L. 2017-140 (H 550): Conviction disqualifications for multistate nursing license. As part of a larger act replacing North Carolina's interstate licensing compact for nurses, new G.S. 90-171.95B provides that each party state must require as a condition for obtaining and retaining a multistate license that the person not have been convicted, been found guilty, or have entered into an agreed disposition of a felony offense under state or federal criminal law. The same disqualification applies to misdemeanors, but they must be related to the practice of nursing as determined on a case-by-case basis. Each state must implement procedures for considering the criminal history of applicants for multistate licensure. The act becomes effective when at least 26 states have enacted the compact or December 31, 2018, whichever is earlier.

27. S.L. 2017-144 (S 104): Criminal background checks for pharmacists. Effective January 1, 2018, the act amends G.S. 90-85.15(c) to require the North Carolina Board of Pharmacy to require applicants for licensure to provide the Board with a criminal record report from one or more reporting services

designated by the Board that provide criminal record reports. The act eliminates the procedure for the Department of Public Safety to provide a criminal record check to the Board for license applicants.

28. S.L. 2017-147 **(S 88): Sharing of capacity report with clinicians involved in capacity restoration; establishment of workgroup to evaluate capacity to proceed process.** Effective June 27, 2017, the act amends G.S. 15A-1002(d) to allow release of a capacity report, and relevant confidential information previously ordered released under G.S. 15A-1002(b)(4) for the capacity evaluation, to clinicians at a program where a defendant is receiving capacity restoration. This provision means that when a defendant is found incapable to proceed in a criminal case and is involuntarily committed, the clinicians providing treatment and capacity restoration would receive the capacity report and information underlying the capacity report. The revised statute also allows release to clinicians designated by the Secretary of Health and Human Services.

    The act also directs the Department of Health and Human Services to convene a workgroup to evaluate the laws governing the capacity to proceed process and impact on the mental health system, local law enforcement, court system, jails, crime victims, and criminal defendants. The workgroup will be comprised of criminal justice and mental health experts to be selected by the groups listed in the act. The Department of Health and Human Services must report the findings and recommendations to the General Assembly by February 1, 2018.

29. S.L. 2017-151 **(S 548): Human trafficking; massage and bodywork therapy.** Effective for offenses committed on or after December 1, 2017, the act amends G.S. 14-43.11 to increase the punishment for human trafficking from a Class F to Class C felony and, if the victim is a minor, from a Class C to Class B2 felony.

    Effective October 1, 2017, the act adds G.S. 14-202.11(a1) to prohibit massage and bodywork therapy, as defined in Article 36 of G.S. Ch. 90, in an adult establishment; the act deletes from the definitions statute for adult establishments, G.S. 14-201.10, the reference to massage and bodywork therapy. The act adds licensure requirements to operate a massage and bodywork therapy establishment. Amended G.S. 90-629.1 requires applicants for a license to practice massage and bodywork therapy or operate a massage and bodywork therapy establishment to consent to a criminal history check. New G.S. 90-632.15 provides that the North Carolina Board of Massage and Bodywork Therapy may deny, suspend, revoke, or refuse a license if the person has pled guilty, entered a no contest plea, or been found guilty of a crime involving moral turpitude by a judge or jury in state or federal court. Effective for offenses committed on or after December 1, 2017, new G.S. 90-634(b3) and (b4) make it a Class 1 misdemeanor to engage in various acts involving a person who is not licensed or exempted to provide massage and bodywork therapy services, including employing or contracting with an unlicensed, non-exempt person for such services.

30. S.L. 2017-158 **(H 236): Miscellaneous civil, criminal, and court changes.** The act makes the following changes, effective July 21, 2017, except as otherwise indicated.

    Contempt power by clerk of superior court. Section 11 of the act amends G.S. 5A-23(b) to provide for the clerk of superior court to hold proceedings for civil contempt when the clerk has subject matter jurisdiction and issued the order alleged to be violated.

    Temporary assistance for district attorneys. Section 14 of the act amends G.S. 7A-64(b) to authorize the Administrative Office of the Courts (AOC) to provide assistance to a district attorney's office, such as the temporary assignment of an assistant district attorney from another district, because of a conflict of interest in addition to the current grounds for assistance described in that subsection. The act deletes this authority when there is an allegation or evidence of prosecutorial

misconduct in an innocence inquiry case that is the subject of a hearing before a three-judge panel under G.S. 15A-1469.

Audio-video transmission of district court civil commitment hearings. G.S. 122C-268 has allowed commitment hearings under that statute to be conducted by interactive videoconferencing. Section 16 of the act amends G.S. 122C-268(g) to provide that the procedures and type of equipment must be approved by the AOC and that the respondent must be able to communicate fully and confidentially with his or her attorney during the proceeding.

Suit by indigent inmate. Section 19 of the act amends G.S. 1-110(b) to provide that if the court determines that an inmate may proceed as an indigent, the clerk of superior court shall issue service of process nunc pro tunc to the date of filing.

Termination of sex offender registration. G.S. 14-208.12A(a) provides that a person required to register as a sex offender in North Carolina based on an out-of-state conviction must file a petition to terminate registration in the district where the person resides. The petitioner also must give notice to the sheriff of the county where he or she is registered as provided in that subsection. Effective for petitions to terminate filed on or after July 21, 2017, section 22 of the act amends G.S. 14-208.12A(a) to provide that if the defendant was convicted of a reportable conviction in federal court, the conviction will be treated as an out-of-state conviction regardless where the offense occurred. *See also* Jamie Markham, Paper on Terminating Sex Offender Registration, N.C. Crim. L., UNC Sch. of Gov't Blog (July 12, 2017).

Pro bono legal services by magistrates, prosecutors, public defenders, clerks, and others. G.S. 84-2 has prohibited justices, judges, magistrates, full-time prosecutors, full-time public defenders, clerks, and other officials from engaging in the private practice of law. Section 26 amends G.S. 84-2 to provide that the private practice of law does not include pro bono legal services by a lawyer other than a justice or judge if the services are sponsored or organized by a professional association of lawyers or a nonprofit corporation rendering legal services pursuant to G.S. 84-5.1.

Access to social security numbers and other personal identifying information. G.S. 132-1.10(f1) has allowed a register of deeds and clerk of court to remove a person's social security and driver's license number from a website available to the general public. Section 26.3 amends G.S. 132-1.10(f1) to allow the AOC as well as registers of deeds and clerks of court to remove a range of identifying and financial information, listed in G.S. 132.110(f), from publicly accessible official records. The amended subsection provides that law enforcement personnel, judicial officials, and parties to a case and their counsel are entitled to inspect and copy the unredacted records.

31. S.L. 2017-160 (H 337): Unmanned aircraft. G.S. 15A-300.1 restricts the use of unmanned aircraft systems. Effective for offenses committed, acts occurring, and causes of action arising on or after December 1, 2017, the act repeals the definition of model aircraft in G.S. 15A-300.1(a)(2) and revises the definition of unmanned aircraft in G.S. 15A-300.1(a)(3) to delete the reference to model aircraft. Effective July 21, 2017, the act repeals G.S. 15A-300.1(d) on infrared and other thermal imaging technology in commercial and private unmanned aircraft systems and adds G.S. 15A-300.1(c1) allowing emergency management agencies to use unmanned aircraft systems for all functions and activities related to emergency management.

32. S.L. 2017-162 (H 384): Retail theft. Effective for offenses committed on or after December 1, 2017, the act amends G.S. 14-72.11 on larceny from a merchant and G.S. 14-86.6 on organized retail theft.

Amended G.S. 14-72.11(1), which makes it a Class H felony to take property worth more than $200 by using an exit door in compliance with certain federal regulations, no longer requires a notice on the door about the offense and punishment. New G.S. 14-72.11(5) makes it a Class H

felony to exchange property for cash, a gift card, a merchandise card, or some other item of value knowing or having reasonable grounds to believe the property is stolen.

Amended G.S. 14-86.6(a) clarifies that a violation of either subdivision (1), which deals with conspiracy to commit retail theft, or subdivision (2), which deals with receiving or possessing stolen retail property, is a Class H felony. New G.S. 14-86.6(a1) creates two crimes, both Class G felonies. It is a violation of subdivision (1) of G.S. 14-86.6(a1) to conspire with another person to steal retail property from one or more retail establishments with a value exceeding $20,000 aggregated over a 90-day period, with the intent to sell the property for gain, and take or cause the property to be placed in the control of a retail property fence or other person in exchange for consideration. It is a violation of subdivision (2) to conspire with two or more people as an organizer, supervisor, financier, leader, or manager to engage for profit in a scheme or course of conduct to effectuate the transfer or sale of property stolen from a merchant in violation of G.S. 14-86.6. New G.S. 14-86.6(c) states that thefts of retail property in more than one county may be aggregated in an alleged violation, and each county where a part of the charged offense occurs has concurrent venue under G.S. 15A-132.

The act also amends the definitions in G.S. 66-387 regarding pawnbrokers and cash converters and the recordkeeping requirements in G.S. 66-392, effective for offenses committed on or after December 1, 2017.

33. S.L. 2017-176 (S 384): Miscellaneous criminal law changes. The act makes the following changes, effective on the dates indicated.

Procedure for MARs. Effective for motions for appropriate relief (MARs) filed on or after December 1, 2017, the act makes the following changes:

- Amended G.S. 15A-1413(d), which has authorized the assigned judge in superior court cases to review and take administrative action on the motion, states that the judge may order disclosure of expert witness information by the parties as provided in the trial-level discovery provisions, G.S. 15A-903(a)(2) and G.S. 15A-905(c)(2).
- New G.S. 15A-1420((b1)(3) specifies a review procedure after the filing of an MAR. The assigned judge conducts an initial review of the motion. If the judge determines that all claims are frivolous, the judge denies the motion. If the motion presents sufficient information to warrant a hearing or the interests of justice so require, the judge appoints counsel for an indigent, unrepresented defendant. Counsel reviews the petitioner's motion and either adopts it or files an amended motion. After counsel files an initial or amended motion, or the judge determines that the petitioner is proceeding without counsel, the judge may direct the State to file an answer. The State may request leave to file an answer that the defendant is not entitled as a matter of law to relief.
- Amended G.S. 7A-451(a)(3) provides that an indigent person is entitled to counsel for an MAR if appointment of counsel is authorized by Chapter 15A.

Prior convictions for habitual felon prosecutions. Effective for offenses committed on or after December 1, 2017—that is, the current felony offense—the act adds G.S. 14-7.1(b) to define felony convictions outside North Carolina that may be used as prior felony convictions in a habitual felon prosecution. *See also* Jeff Welty, Legislative Changes to Which Prior Convictions Can Support a Habitual Felon Charge, N.C. Crim. L., UNC Sch. of Gov't Blog (July 24, 2017). They are:

- An offense that is a felony under the laws of another state or sovereign that is substantially similar to a felony in North Carolina and for which a plea of guilty was entered or conviction returned regardless of the sentence actually imposed.
- An offense under the laws of another state or sovereign that does not classify any crimes as felonies if

- the offense is substantially similar to an offense that is a felony in North Carolina,
- the offense may be punished by imprisonment for more than a year in state prison, and
- a plea of guilty was entered or a conviction returned regardless of the actual sentence imposed.

- An offense that is a felony under federal law other than a federal offense relating to the manufacture, possession, sale, and kindred offenses involving intoxicating liquors.

Eligibility for driving privileges by person convicted of habitual impaired driving. The act removes the sunset clause in Section 7 of S.L. 2009-369 (H 1185), as amended by Section 61.5 of S.L. 2014-115 (H 1133), which allows the Division of Motor Vehicles to conditionally restore the license of a person convicted of habitual impaired driving after 10 years from the completion of the person's sentence.

Habitual breaking and entering. Effective for offenses committed on or after December 1, 2017, the act amends the definition of breaking and entering for purposes of habitual breaking and entering prosecutions to include breaking or entering with intent to terrorize or injure an occupant of the building under G.S. 14-54(a1).

Fingerprinting. Effective December 1, 2017, the act amends G.S. 15A-502 to provide that if a person is charged with an offense for which fingerprints are required under that statute, the court before which the charge is pending shall order the defendant to submit to fingerprinting by the sheriff or other appropriate law enforcement officer at the earliest practicable opportunity. If the person fails to appear as ordered, the court may initiate criminal contempt proceedings.

Circumstances authorizing arrest warrants and limitations on citizen-initiated arrest warrants. Effective for arrest warrants issued on or after December 1, 2017, the act amends G.S. 15A-304(b) on the issuance of arrest warrants in two respects. First, new G.S. 15A-304(b)(1) requires a judicial official to issue a criminal summons instead of an arrest warrant unless the official finds that the accused should be taken into custody. The new provision lists circumstances for the judicial official to consider in determining whether the accused should be taken into custody. Second, under new G.S. 15A-304(b)(2), for a judicial official to find probable cause for an arrest warrant based solely on information provided by a person who is not a law enforcement officer, the information must be provided by written affidavit. Further, if a finding of probable cause is based solely on a written affidavit of a person who is not a law enforcement officer, the judicial official must issue a criminal summons, not an arrest warrant, unless one of three circumstances exists: there is corroborating testimony by a law enforcement officer or at least one disinterested witness; the judicial official finds that additional investigation by law enforcement would be a substantial burden for the complainant; or the judicial official finds substantial evidence of one or more circumstances in G.S. 15A-304(b)(1) for taking the accused into custody.

34. S.L. 2017-166 (H 469): Regulation of fully autonomous motor vehicles. Effective December 1, 2017, the act enacts new Article 18 in Chapter 20 (G.S. 20-400 to -403) to regulate the operation of fully autonomous vehicles. A fully autonomous vehicle is defined as a motor vehicle that is equipped with an automated driving system that does not require an occupant of the vehicle to perform any portion of the operational or tactical control of the vehicle when the automated driving system is engaged. *See also* Shea Denning, NC Regulates Fully Autonomous Vehicles, N.C. Crim. L., UNC Sch. of Gov't Blog (July 26, 2017).

Vehicle requirements. New G.S. 20-401(g) permits the operation of fully autonomous vehicles on North Carolina roadways if the vehicle meets all of the following requirements:

1. the vehicle complies with state and federal law and has been certified as being in compliance with federal motor vehicle safety standards;

2. if involved in a crash, the vehicle is capable of stopping at the scene, contacting the appropriate law enforcement agency to report the crash, calling for medical assistance, and remaining at the scene until authorized to leave;
3. the vehicle can achieve a "minimal risk condition,"
4. the vehicle is covered by a motor vehicle liability policy meeting statutory requirements; and
5. the vehicle is lawfully registered.

Rules of operation. New G.S. 20-401(a) states that the operator of a fully autonomous vehicle with the automated driving system engaged is not required to be licensed to drive. Subsection (d) of this new provision states that the person in whose name a fully autonomous vehicle is registered is responsible for any moving violations involving the vehicle. A person must be at least 12 years old to travel unsupervised in a fully autonomous vehicle. G.S. 20-401(c) makes it unlawful for the parent or legal guardian of a child under 12 to knowingly permit the child to occupy a fully autonomous vehicle that is in motion or that has the engine running unless the child is being supervised by a person who is at least 18 years old.

Preemption. Local governments are prohibited under new G.S. 20-401(f) from enacting laws regulating fully autonomous vehicles or vehicles that are equipped with an automated driving system. Local governments may, however, continue to regulate traffic as authorized in Chapter 153A and Chapter 160A of the General Statutes so long as the regulations apply to motor vehicles generally.

Fully Autonomous Vehicle Committee established. New G.S. 20-403 creates a Fully Autonomous Vehicle Committee within the North Carolina Department of Transportation (DOT) and specifies the categories of people who comprise the 17-member committee. The committee must meet at least four times a year to consider matters related to fully autonomous vehicle technology, review the application of state motor vehicle law to fully autonomous vehicles, and make recommendations about the testing of fully autonomous vehicles, for DOT rules and ordinances, and to the General Assembly on necessary changes to state law.

35. S.L. 2017-169 (H 716): Rules governing required distance between vehicles for platoon vehicles. Effective August 1, 2017, this act amends G.S. 20-152, which currently prohibits the driver of a motor vehicle from following another vehicle more closely than is reasonable and prudent and requires a driver traveling on a highway outside of a business or residential district to, when conditions permit, leave enough space between his or her vehicle and the vehicle ahead so as to allow an overtaking vehicle to enter and occupy the intervening space without danger. New G.S. 20-152(c) provides that the aforementioned rules do not apply to the driver of any non-leading commercial motor vehicle traveling in a platoon on a roadway where the NC Department of Transportation (DOT) has authorized travel by platoon. The term "platoon" means a group of individual commercial motor vehicles traveling at close following distances in a unified manner through the use of an electronically interconnected braking system. DOT must submit a report on the implementation of this act to the Joint Legislative Transportation Oversight Committee on or before April 1, 2018.

36. S.L. 2017-179 (H 128): Unmanned aircraft near prison or jail. Effective for offenses committed on or after December 1, 2017, new G.S. 15A-300.3(a) prohibits the use of an unmanned aircraft system within a horizontal distance of 500 feet or vertical distance of 250 feet from a local jail or state or federal prison. New G.S. 15A-300.3(b) includes several exceptions, such as written consent from the official in charge of the facility and law enforcement use in accordance with G.S. 15A-300.1(c). New G.S. 15A-300.3(c) establishes three punishment levels. Delivering or attempting to deliver a weapon to a prison or jail by an unmanned aircraft system within the prohibited distances, whether or not

within an exception, is a Class H felony, with a mandatory fine of $1,500. Delivering or attempting to deliver contraband, defined as controlled substances, cigarettes, alcohol, and communication devices, is a Class I felony, with a mandatory fine of $1,000. Using an unmanned aircraft system in violation of G.S. 15A-300.3(a) and not within an exception is a Class 1 misdemeanor, with a mandatory fine of $500. New G.S. 15A-300.3(d) contains provisions on seizure and forfeiture of illegally-used unmanned aircraft systems and attached property, weapons, and contraband. In an uncodified section, the act directs the Division of Aviation of the Department of Transportation to develop guidelines for the content and dimensions of posted notices to mark boundaries in accordance with the requirements of new G.S. 15A-300.3.

37. S.L. 2017-182 (H 559): Hunting on Sunday. Effective July 25, 2017, the act amends G.S. 103-2 to expand hunting of wild animals, upland game birds, and migratory birds on Sunday, as follows:

- For landowners, members of a landowner's family, and others with written permission from a landowner, amended G.S. 103-2(a) allows hunting of wild animals and upland game birds with firearms on Sunday on the landowner's property subject to certain limitations. The act removes the previous prohibitions on hunting migratory birds on Sunday on the landowner's property; within 500 yards of a residence not owned by the landowner; and in a county with a population of more than 700,000 people.
- On State-managed public hunting lands, new G.S. 103-2(a1) allows people to hunt wild animals and upland game birds with firearms on Sunday except they may not hunt on Sunday between 9:30 a.m. and 12:30 p.m.; may not use a firearm to take deer that are run or chased by dogs; and may not hunt within 500 yards of a place of religious worship.
- New G.S. 103-2(a2) allows hunting of migratory birds on Sunday if authorized by the Wildlife Resources Commission but prohibits hunting on Sunday between 9:30 a.m. and 12:30 p.m. other than on licensed hunting preserves; within 500 yards of a place of religious worship; and before March 1, 2018.

Effective October 1, 2017, the act amends G.S. 153A-129, which authorizes counties to adopt ordinances prohibiting Sunday hunting, to provide that such an ordinance is not effective unless approved by a majority of those voting in a county-wide referendum.

38. S.L. 2017-186 (S 344): Consolidation of Division of Adult Correction and Division of Juvenile Justice. Effective December 1, 2017, new G.S. 143B-630 establishes the Division of Adult Correction and Juvenile Justice within the Department of Public Safety, and new G.S. 143B-800 establishes the Juvenile Justice Section within that division to exercise the powers and duties previously performed by the Division of Juvenile Justice. The act makes conforming changes to numerous statutes to reflect the organizational structure.

39. S.L. 2017-188 (S 55): Civil enforcement of the law requiring vehicles to stop for a stopped school bus. Effective July 25, 2017, the act enacts new G.S. 153A-246, which permits counties to adopt ordinances for the civil enforcement of G.S. 20-217—the statute that requires motor vehicles to stop for stopped school buses. A county may adopt an ordinance that permits civil enforcement of G.S. 20-217 by means of an automated school bus safety camera installed and operated on the school bus. Such an ordinance does not apply to any violation of G.S. 20-217 that results in injury or death. *See also* Shea Denning, Counties May Impose Civil Penalties for Passing a Stopped School Bus, N.C. Crim. L., UNC Sch. of Gov't Blog (Aug. 17, 2017).

Administrative procedure. New G.S. 153A-246(b) sets forth the procedures for civil enforcement. The county must issue a citation notifying the registered owner of the motor vehicle of the violation. The owner must receive the citation within 60 days of the violation. The citation

must include an image taken from the automated school bus camera that shows the vehicle involved in the violation. It must also include an affirmation from a law enforcement officer that his or her inspection of the image reveals that the owner's motor vehicle violated the ordinance. The county must institute a nonjudicial administrative hearing process for contested citations or penalties. A person may appeal an adverse administrative decision to district court.

Penalty. Violations of such an ordinance are noncriminal violations for which no insurance or driver's license points may be assessed. The civil penalty for the first offense is $400. The penalty for the second offense is $750. Each subsequent ordinance violation is subject to a $1,000 penalty. A person who fails to pay the civil penalty or request a hearing within 30 days after receiving the citation waives the right to contest responsibility and is subject to a late penalty of $100 in addition to the assessed civil penalty.

Registration hold. Effective one year after the effective date of the act (that is, July 25, 2018), DMV must refuse to register any motor vehicle owned by a person who has failed to pay a civil penalty assessed under G.S. 153A-246. This provision applies to the registration of any motor vehicle whose owner's failure to pay is reported by a county to DMV on or after July 25, 2017.

No civil enforcement in the case of criminal prosecution. If a person is charged in a criminal pleading with violating G.S. 20-217, the charging law enforcement officer must so notify the county office responsible for processing civil citations. The county may not impose a civil penalty against the person arising out of the same facts as those for which the person is charged in a criminal pleading. G.S. 153A-246(e) states that the General Assembly "encourages criminal prosecution for violation of G.S. 20-217" when school bus camera photographs and video provide sufficient evidence to support such a prosecution. Amended G.S. 20-217(h) clarifies, however, that "failure to produce a photograph or video recorded by an automated school bus safety camera" does not preclude prosecution.

Images as evidence. New G.S. 115C-242.1(d) requires that any photographs or videos recorded by an automated school bus safety camera that capture a violation of G.S. 20-217 be provided to the investigating law enforcement agency for use as evidence in a criminal prosecution.

40. S.L. 2017-189 (S 599): Mandatory revocation of teacher license on conviction of certain crimes; criminal history checks and dismissal procedures. As part of a larger rewrite of teacher licensing laws, the act makes the following changes, effective beginning the 2017-18 school year. New G.S. 115C-270.35(b) requires the State Board of Education to revoke the license of a professional educator, without the right to a hearing, if the person has entered a plea of guilty or no contest or has been finally convicted of any of the listed crimes, such as first or second degree murder, felony assault with a deadly weapon with intent to kill or inflicting serious injury, kidnapping, child abuse, and several sexually-related offenses. The provision replaces repealed G.S. 115C-296(d), which made the same crimes mandatory grounds for license revocation.

New G.S. 115C-332(i) authorizes the local board of education to adopt a policy providing for periodic criminal history checks of employees. The local board may not require employees to pay for the periodic check. The revised subsection also requires the local board to indicate, on inquiry by another local board of education, charter school, or regional school in the state, the reason for an employee's resignation or dismissal if the employee's criminal history was relevant to that decision. Revised G.S. 115C-325(o)(2) and G.S. 115C-325.9(b) provide that if a teacher's criminal history is relevant to a teacher's resignation, the local board must report to the State Board of Education the reason for the employee's resignation. New G.S. 115C-238.73(i) contains the same provisions for regional schools. Revised G.S. 115C-218.90(b)(1) provides that if the local board of education adopts a policy providing for periodic criminal history checks of employees, the board of directors of each charter school in that local school administrative unit shall adopt the same policy. The revised

provision requires that charter schools notify other schools, on request, if an employee's criminal history was relevant to the employee's resignation or dismissal.

Revised G.S. 115C-325(f)(1), which is repealed effective June 30, 2018, and G.S. 115C-325.5(a) provide that if the superintendent believes that cause exists for dismissing a teacher and that immediate suspension is necessary, the superintendent may suspend the teacher without pay after meeting with the teacher and giving him or her written notice of the charges and an opportunity to respond. The revised provisions state that if the teacher is incarcerated, the superintendent is not required to meet with the teacher in person and instead may proceed in writing.

41. S.L. 2017-191 (H 84): DMV to develop license designation for hearing impaired drivers. Effective January 1, 2018, the act enacts new G.S. 20-7(q2), which requires DMV to develop a driver's license designation that may be granted on request to a person who is deaf or hard of hearing. The designation must appear in the form of a unique symbol on the front of the person's license. To obtain the designation, the person must provide verification or documentation substantiating his or her hearing loss. A person may also request that DMV enter the driver's license symbol and a descriptor into the electronic record of any motor vehicle registered in the person's name.

The information collected under subsection (q2) is only available to law enforcement and only "for the purpose of ensuring mutually safe interactions between law enforcement and persons who are deaf or hard of hearing."

The act also enacts new G.S. 17C-6(a)(17), which authorizes the NC Criminal Justice Education and Training Standards Commission to establish educational and training standards for officers concerning (1) recognizing and appropriately interacting with persons who are hearing impaired and (2) driver's license and vehicle registration identifiers for persons who are hearing impaired, including that those identifiers are optional.

42. S.L. 2017-194 (H 138): Criminal gangs. Effective for offenses committed on or after December 1, 2017, the act repeals G.S. 14-50.16, which defined criminal street gang and criminal street gang activity, and replaces it with G.S. 14-50.16A, with new definitions of criminal gangs, criminal gang activity, criminal gang leader or organizer, and criminal gang member. To be considered a criminal gang leader or organizer, the person must meet at least two of the five listed criteria, such as recruiting other gang members and receiving a larger portions of the proceeds of criminal gang activity. To be considered a criminal gang member, the person must meet at least three of the nine listed criteria, such as admitting to membership, having tattoos associated with a criminal gang, and appearing in any form of social media to promote a criminal gang. In several criminal statutes, the act replaces the terms criminal street gang and criminal street gang activity with criminal gang and criminal gang activity. *See* G.S. 14-34.9 (discharging firearm within enclosure); G.S. 14-50.17 (encouraging person 16 or older to participate in gang); G.S. 14-50.18 (encouraging person under 16 to participate in gang); G.S. 14-50.19 (deterring person from withdrawing from gang); G.S. 14-50.20 (retaliating against person for withdrawing from gang); G.S. 14-50.22 (enhanced offense for misdemeanor gang activity); G.S. 14-50.23 (forfeiture of property derived from gang activity); G.S. 14-50.25 (report of disposition of offense involving gang activity); G.S. 14-50.42 and G.S. 14-50.43 (real property used by gang for gang activity a public nuisance); G.S. 15A-1340.16 (aggravating factor); G.S. 15A-1343(b1)(9b) (special conditions of probation); and G.S. 15A-533(e)(3) (restrictions on pretrial release).

In addition to the definitional changes, the act makes the following substantive changes. New G.S. 15A-1340.16E provides that if an offense was committed as part of criminal gang activity, the person is sentenced one felony class higher than the principal felony for which the person was convicted. If the person is a criminal gang leader or organizer, the class is two classes higher than

the principal felony. The sentence can be no higher than a Class C felony, and any sentence must run consecutively with and must commence at the expiration of any sentence then "being served." The enhancement does not apply to a gang offense in Article 13A of G.S. Ch. 14. The indictment or information for the felony must allege in that pleading the facts that qualify the offense for enhancement; one pleading is sufficient for all felonies tried at a single trial. The State must prove the facts beyond a reasonable doubt; the procedure for determining aggravating factors in G.S. 15A-1340.16(a1), (a2), and (a3) apply.

Revised G.S. 14-50.19 increases the punishment from a Class H to Class G felony for threatening a person with the intent to deter the person from assisting another to withdraw from a criminal gang; and it creates the offense of injuring a person with that intent, punishable as a Class F felony. Likewise, revised G.S.14-50.20 increases the punishment from a Class H to Class G felony to threaten to injure a person or damage property of another in retaliation against a person for having withdrawn from a criminal gang; and it creates the offense of injuring a person for that purpose, a Class F felony. Amended G.S. 14-50.42, which makes real property used by a criminal gang for criminal gang activity a public nuisance, revises the requirements for showing that the owner or person in legal possession was or was not acting in good faith or engaging in innocent activities. Revised G.S. 15A-533(e), which establishes a rebuttable presumption against pretrial release, adds that imposition of an enhanced sentence under new G.S. 15A-1340.16E is one of the conditions triggering the presumption if all of the other conditions are present.

43. S.L. 2017-195 (S 445): Expunction procedures and conditions. The act makes several changes to North Carolina's expunction laws. Most importantly, the act expands the availability of relief in two ways: it reduces the waiting period to expunge older nonviolent felony and misdemeanor convictions, and it allows a person to obtain an expunction of a dismissal regardless of whether the person received any prior expunctions. Because the act states that it applies to petitions filed on or after December 1, 2017, the revised statutes apply to offenses, charges, and convictions that occur before, on, or after December 1, 2017. The tradeoff for this expansion is that information about expunctions, maintained by the Administrative Office of the Courts and otherwise confidential, is available for review by the prosecutor and useable to calculate prior record level at sentencing if the person is convicted of a subsequent offense. This part of the act applies to expunctions granted on or after July 1, 2018. The act makes other changes to create more consistency and uniformity in the expunction process. *See also* John Rubin, Expanded Expunction Opportunities, N.C. Crim. L., UNC Sch. of Gov't Blog (Aug. 1, 2017).

Reduction of waiting period. G.S. 15A-145.5 has allowed a person to expunge older felony and misdemeanor convictions if the offense was nonviolent as defined in the statute, 15 years have elapsed, and person satisfies the other statutory conditions. The act amends G.S. 15A-145.5(c) to reduce the 15-year waiting period to 10 years for nonviolent felonies and to 5 years for nonviolent misdemeanors. The remaining criteria for an expunction remain the same.

The act does not clarify an ambiguity about when this waiting period begins. The amended statute states that the petition may not be filed earlier than 10 years after the date of conviction for a nonviolent felony and 5 years for a nonviolent misdemeanor or when any sentence has been completed, whichever occurs later. This language appears to mean that a person must wait until (i) 5 or 10 years have passed from the date of conviction depending on whether it is for a misdemeanor or felony or (ii) the person completes the terms of his or her sentence, whichever occurs later. Thus, a person always must wait the specified number of years from the date of conviction before petitioning for an expunction. If the person has not completed his or her sentence within that period, he or she must wait any additional time it takes to complete the sentence. The provision does not require the person to wait an additional 5 or 10 years after completing his or her sentence,

which would render the conviction date meaningless since sentences always end on or after the conviction date. For a further discussion of this issue, see John Rubin, Relief from a Criminal Conviction (hereinafter Relief Guide), Older Nonviolent Misdemeanor and Felony Convictions (UNC School of Government 2016).

Elimination of limit on expunctions of dismissals. G.S. 15A-146 has allowed a person to expunge dismissals by the court or prosecutor and findings of not guilty if the person has not previously obtained an expunction under various statutes and satisfies other statutory conditions, such as not having been convicted of a felony. The act amends G.S. 15A-146 to eliminate the prior expunction bar. Three subsections of G.S. 15A-146 allow expunctions without regard to whether the person has obtained a previous expunction.

- Amended subsection (a) continues to authorize expunction of dismissals.
- Amended subsection (a1) allows expunction of multiple dismissals and eliminates the requirement that the offenses be alleged to have occurred within the same 12-month period. Further, the amended language reinforces that a person may obtain an expunction of a dismissed charge even if he or she is convicted of misdemeanors in the same case. This has been the law because a misdemeanor conviction, whether it occurs before, at the same time, or after a dismissal, does not bar expunction of a dismissal. See Relief Guide, Dismissal or Finding of Not Guilty of Misdemeanors, Felonies, and Certain Infractions. Amended subsection (a1) reinforces this result because it states that if a person is charged with multiple offenses and the charges are dismissed, the person is entitled to expunge each of the dismissed charges (assuming the other requirements are met); previously, the subsection referred to "all" charges being dismissed.
- New subsection (a2) allows expunction of findings of not guilty, which previously were covered by subsection (a). Not guilty findings appear to have been moved to a separate subsection because they are not subject to the new reporting requirements to prosecutors, discussed below.

Elimination of the prior expunction bar for dismissals and not guilty findings also addresses a potentially odd result under G.S. 15A-145.5. That statute has allowed expunction of multiple convictions of older nonviolent misdemeanors and felonies from the same session of court, which are now subject to the shorter waiting period discussed above. But, the statute does not expressly allow expunctions of dismissals even if related to the convictions being expunged. And, under the previous version of G.S. 15A-146, a person may not have been able to obtain an expunction of the dismissed charge if he or she received an expunction of a conviction under G.S. 15A-145.5 because a prior expunction barred relief. Now, a person may obtain an expunction of a conviction under G.S. 15A-145.5 and an expunction of a dismissal under G.S. 15A-146, whether related or unrelated to the conviction, because the prior expunction bar has been eliminated. G.S. 15A-146 continues to bar expunctions if a person has a felony conviction, but an expunged conviction, because it has been expunged, should not count as a conviction except for calculating the person's prior record level, discussed below. *See* Relief Guide, Expunged Convictions.

Sharing of expunctions with prosecutor and use for prior record level for subsequent offenses. New G.S. 15A-151.5 allows prosecutors to access and use most expunctions to determine a person's prior record level for subsequent offenses if the record was expunged on or after July 1, 2018. Although people may obtain expunctions under the new provisions beginning December 1, 2017, the later effective date of this requirement appears to be for the purpose of giving the Administrative Office of the Courts (AOC) more time to implement it. The new statute applies to expunctions under G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, 15A.145.5, 15A-145.6, 15A-146(a), and 15A-146(a1). It does not apply to expunctions of not guilty findings under new G.S. 15A-146(a2).

Subsection (a) of new G.S. 15A-151.5 requires the AOC to make the confidential files it maintains of the above expunctions available electronically to all prosecutors in the State. Under amended G.S. 15A-151(a), the confidential files consist of the names of people who received expunctions and the granted petitions. (G.S. 15A-151 also continues to allow law enforcement entities to obtain these confidential files for expunctions under G.S. 15A-145.4, 15A-145.5, and 15A-145.6 for certification and employment purposes.) Subsection (b) of G.S. 15A-151.5 authorizes the use of expunged criminal records, other than expunged dismissals under G.S. 15A-146, to calculate a person's prior record level if the person is convicted of a subsequent criminal offense. The act makes conforming changes to other expunction statutes to reflect this authority. Subsection (c) of G.S. 15A-151.5 states that the information provided by the AOC is prima facie evidence of an expunged conviction for purposes of calculating prior record level and is admissible in evidence at a subsequent criminal sentencing hearing.

Other than this access and use, the effect of an order of expunction remains the same under North Carolina law. The person for whom an order has been entered is restored to the status he or she occupied before the criminal proceeding and may not be held to have given a false statement by not disclosing the expunged matter. *See, e.g.,* G.S. 15A-145.5(c), (d). Agencies must purge their records of all entries of the case. *See, e.g.,* G.S. 15A-150(b). The previous version of this statute stated that agencies must expunge rather than purge their records, but the change in terminology does not appear to make a legal difference.

Notice by clerk. Amended G.S. 15A-150 requires the clerk of superior court to file granted petitions and orders with the AOC and to provide a certified copy of an order of expunction to the person receiving it as well as to agencies required to expunge their records. The amended statute clarifies that the clerk should send orders to the Combined Records Section of the Department of Public Safety and to the State Bureau of Investigation rather than just to the Department of Public Safety. The State Bureau of Investigation is responsible for forwarding the orders to the Federal Bureau of Investigation. The act also amends G.S. 15A-146, as well as G.S. 15A-147 (expunction based on identity theft or mistaken identity) and G.S. 15A-148 (expunction of DNA records), to require that a petition for expunction be on a form approved by the AOC, presumably to make the records submitted by the clerk to the AOC more uniform. In some instances, the AOC forms seek to resolve inconsistencies and ambiguities in the expunction laws. The requirement that AOC forms be used does not preclude a petitioner from arguing and a judge finding that the expunction laws may warrant greater relief.

Record check process. The act also amends the expunction statutes to clarify the responsibilities of the clerk of court for record checks. The amended statutes state that the petitioner's application for a record check is filed with the clerk of court and the clerk is responsible for forwarding the request to the Administrative Office of the Courts (to check for prior expunctions) and the Department of Public Safety (to check for prior criminal record). *See* G.S. 15A-145(a)(4), 15A-145.1(a)(4a), 15A-145.2(3a), 15A-145.3(a)(3a), 15A-145.4(c)(4), 15A-145.5(c)(4), 15A-146(c).

Venue. Last, the act amends several statutes to clarify that a petition for an expunction under the applicable statute must be filed in the court of the county of conviction. *See* G.S. 15A-145(a), 15A-145.1(a), 15A-145.4(b), 15A-145.5(c), 15A-145.6(b). Likewise, the act amends statutes on expunction of a discharge and dismissal to require that the petition be filed in the court of the county where the defendant was charged. *See* G.S. 15A-145.2(a), 15A-145.3(a).

44. **S.L. 2017 197 (H 528): Council of State special prosecutor pilot project.** Effective July 1, 2017, section 5.7 of the act creates a pilot project authorizing the Administrative Office of the Courts (AOC), in consultation with the Conference of District Attorneys, to appoint up to two special prosecutors per Council of State member at the member's request to aid local district attorneys'

offices in prosecuting cases under G.S. Ch. 14, Article 15 (arson and other burnings), violations of G.S. Ch. 58 (insurance), and violations of G.S. Ch. 14 relating to insurance. Attorneys appointed as special prosecutors under this program are agency attorneys currently employed in the department of the requesting Counsel of State member but with a physical office in the local district attorney's office during their appointment. The attorneys report to the AOC Director or designee. The project expires June 30, 2019, and all pending cases remain with the local district attorney's office for prosecution by attorneys employed by that office.

45. **S.L. 2017-204 (S 628): Identity theft in dealings with Department of Revenue.** Effective for offenses committed on or after December 1, 2017, section 3.1 of the act adds G.S. 105-263(a)(9b) to make it a Class G felony to knowingly obtain, possess, or use identifying information of another person, living or dead, with the intent to fraudulently utilize that information in a submission to the North Carolina Department of Revenue to obtain anything of value, benefit, or advantage. The provision makes it a Class F felony if the person whose identifying information is obtained, possessed, or used in this manner suffers any adverse financial impact as a proximate result of the offense. Each identity obtained, possessed, or used in this manner is a separate offense.