2013 Legislation Affecting Criminal Law and Procedure (as of May 21, 2013)

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Each ratified act discussed here is identified by its chapter number in the session laws and the number of the original bill. When an act creates new sections in the North Carolina General Statutes (hereinafter G.S.), the section number is given; however, the codifier of statutes may change that number later. Copies of bills may be viewed on the General Assembly's website at http://www.ncleg.net/.

1. **S.L. 2013-3 (H 66): Captivity licenses and permits.** Effective March 6, 2013, the act: (1) amends G.S. 113-274(c)(1b) to authorize the Wildlife Resources Commission to issue a temporary permit to possess wild animals and birds for scientific, exhibition, or other purposes; (2) exempts from Article 1 (Civil Remedy for Protection of Animals) of G.S. Chapter 19A the taking and holding in captivity of a wild animal by a licensed sportsman for use or display in an annual, seasonal, or cultural event, as long as the animal is captured from the wild and returned to the wild at or near the area where it was captured; and (3) amends G.S. 19A-2 to provide that the venue for any action shall be only in the superior court in the county where a violation is alleged to have occurred.

2. **S.L. 2013-6 (H 19): Disorderly conduct at a funeral.** Effective for offenses committed on or after December 1, 2013, the act amends G.S. 14-288.4(a)(8), the disorderly conduct offense at a funeral or memorial service. The impermissible conduct will apply within two hours (now, one hour) preceding, during, or after the funeral or memorial service, and will be prohibited within 500 feet (now, 300 feet) of the ceremonial site, location of the funeral or memorial service, or the family's processional route. A violation of this subdivision is increased from a Class 2 misdemeanor to a Class 1 misdemeanor for a first offense, from a Class 1 misdemeanor to a Class I felony for a second offense, and from a Class I felony to a Class H felony for a third or subsequent offense.

3. **S.L. 2013-18 (S 45): Capacity to proceed amendments.** Effective for offenses committed on or after December 1, 2013, the act makes the following changes concerning a defendant's capacity to proceed: (1) amends G.S. 15A-1002(b)(1) to make clear that the court at a hearing after a local examination may call the appointed examining expert with or without the request of the State or the defendant; (2) amends G.S. 15A-1002(b)(1) to limit an examination at a State facility to a defendant charged with a felony (previously also allowed for a misdemeanor after a local examination); (3) adds new G.S. 15A-1002(b)(4) to provide that a judge who orders a state or local examination must release specified confidential information to the examiner after providing the defendant with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary for the hearing and unavailable from any other source; records must be withheld from public inspection; (4) amends G.S. 15A-1002(b1) to require findings of fact in a court order on capacity to proceed and to provide that the State and the defendant may stipulate that the defendant is capable of proceeding—but they cannot stipulate that the defendant lacks the capacity to proceed; (5) adds new G.S. 15A-1002(b)(2) to specify when examiner reports must be completed and provided to the court, with provisions for extensions of time for good cause; (6) amends G.S. 15A-1004(c) (defendant found incapable of proceeding and placed in facility after involuntary civil commitment) to require the court to order the defendant to be examined to determine whether he or she has the capacity to proceed before released from custody; (7) amends G.S. 15A-1006 (return of defendant for trial when determined by institution or individual having custody of defendant that he or she has gained capacity to proceed) to include written notice of that fact to clerk, district attorney, defendant's attorney, and sheriff; (8) amends G.S. 15A-1007 (supplemental hearings) to set time limit for district attorney to calendar hearing and, if court determines that the defendant has gained the capacity to proceed, specifies standards for

calendaring case for trial and continuances; (9) substantially revises G.S. 15A-1008 (dismissal of charges) and repeals G.S. 15A-1009 (dismissal with leave) to specify the circumstances when dismissed charges can or cannot be refiled; (10) amends G.S. 122C-54(b) (mental examination of criminal defendant as ordered under G.S. 15A-1002) to require that the report must contain a treatment recommendation, if any, and an opinion whether there is a likelihood that the defendant will gain the capacity to proceed; and (11) adds new G.S. 122C-278 to provide that whenever a respondent had been committed to either inpatient or outpatient treatment after being found to be incapable of proceeding and referred by a court for civil commitment proceedings, he or she shall not be discharged from a hospital or institution or an outpatient commitment case terminated until the respondent had been examined for capacity to proceed and a report filed with the clerk of court under G.S. 15A-1002.

Effective April 3, 2013, requires Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services by December 1, 2013, to adopt (1) rules to require forensic evaluators appointed under G.S. 15A-1002(b) to meet specified requirements (training to be credentialed as certified forensic evaluator and attend continuing education seminars); and (2) guidelines for treatment of those who are involuntarily committed after a determination of incapacity to proceed.

4. **S.L. 2013-23 (S 20): Limited immunity for certain drug-related and alcohol-related offenses.** Effective April 9, 2013, the act provides limited immunity as follows:

Drug-related overdose treatment. Adds new G.S. 90-96.2 to provide that a person acting in good faith who seeks medical assistance for an individual experiencing a "drug-related overdose" (defined in the act) shall not be prosecuted for: (1) misdemeanor possession of a controlled substance under G.S. 90-95(a)(3), (2) a felony violation of G.S. 90-95(a)(3) for possessing less than one gram of cocaine or heroin, or (3) misdemeanor possession of drug paraphernalia under G.S. 90-113.22, if the evidence for prosecution of these offenses was obtained as a result of the person seeking medical assistance for the drug-related overdose. Also provides that a person who experiences a drug-related overdose and is in need of medical assistance shall not be prosecuted for the same offenses set out above if the evidence for prosecution of these offenses was obtained as a result of the drug-related overdose and the need for medical assistance. Provides that the immunity set out above does not bar the admissibility of any evidence obtained in connection with the investigation and prosecution of other crimes committed by the person who otherwise qualifies for the immunity.

Treating overdose with opioid antagonist. Adds new G.S. 90-106.2 to provide that a "practitioner" (defined in G.S. 90-87(22) to include doctor, dentist, etc.) acting in good faith and exercising reasonable care may directly or by standing order prescribe an "opioid antagonist" (defined as naloxone hydrochloride) to (1) a person at risk of experiencing an opiate-related overdose, or (2) a family member, friend, or other person in a position to assist such a person. Provides that as an indicator of the practitioner's good faith, the practitioner before prescribing the opioid may require a written communication with specified information from the recipient of the prescription. Sets out the standard for administering the opioid by the person who receives it. Provides immunity from civil and criminal liability for actions authorized by this new law for (1) a practitioner who prescribes the opioid, and (2) the person who administers the opioid.

Person under 21 possessing or consuming alcoholic beverages. Adds new G.S. 18B-302.2 to provide that a person under the age of 21 shall not be prosecuted for a violation of G.S. 18B-302 for the possession or consumption of alcoholic beverages if law enforcement, including campus police, became aware of a person's possession or consumption of alcohol solely because he or she was seeking medical assistance for another individual, and the person (1) acted in good faith, on a reasonable belief that he or she was the first to call for assistance, (2) used his or her own name when contacting authorities, and (3) remained with the individual needing medical assistance until help arrived.

5. **S.L. 2013-24 (S 33): Occupational licensing board's denial of applicant with criminal record.** Effective for applications for licenses issued by occupational licensing boards submitted on or after July 1, 2013, the act adds new G.S. 93B-8.1 to provide, unless the law governing a board is otherwise, it shall not automatically deny a license based on an applicant's criminal history. If the board may deny a license based on the applicant's conviction of a crime or commission of a crime involving fraud or moral turpitude, and the applicant's verified record shows one or more convictions, the board may deny the license if it finds the denial is warranted after considering the following factors: (1) level and seriousness of the crime; (2) date of the crime; (3) applicant's age at the time of the crime; (4) circumstances of the crime, if known; (5) nexus between the criminal conduct and applicant's prospective duties; (6) applicant's prison, jail, probation, rehabilitation, and employment records since the crime was committed; (7) applicant's later commission of a crime; and (8) affidavits or other written documents, including character references. Provides that board may deny a license if the applicant refuses to consent to a criminal history record check or the use of fingerprints or other identifying information required by North Carolina or national repositories of criminal histories. The act does not apply to the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission.

6. **S.L. 2013-28 (S 123): Sex offender residency restrictions.** Effective April 16, 2013, the act clarifies the applicability of G.S. 14-208.16, which prohibits a registered sex offender from knowingly residing within 1,000 feet of a school or child care center. The act amends G.S. 14-208.16(a) to provide that the residency prohibition applies to any registrant who did not establish his or her residence before August 16, 2006, by purchasing or leasing it before that date or by residing with an immediately family member who did so. The introductory language to the bill states that the new language was added to correct law enforcement officials' mistaken belief that the residency restriction did not apply to a registrant if he or she resided with an immediate family member who had established residence before August 16, 2006—even if the registrant himself or herself did not move in with the family member until after that date. The act also amends S.L. 2006-247, replacing references in that legislation to the date that the residency restriction would become law with "August 16, 2006," the specific date on which that portion of the legislation in fact became law.

7. **S.L. 2013-33 (S 122): Add human trafficking conviction to list that requires sex offender registration.** Effective for offenses committed on or after December 1, 2013, the act amends G.S. 14-208.6(5) (definition of "sexually violent offense") to include a conviction of human trafficking under G.S. 14-43.11 if the offense was committed against (1) a minor less than 18 years old, or (2) any person with the intent that the person be held in sexual servitude. The convicted defendant would be required to register as a sex offender.

8. **S.L. 2013-35 (H 75): Increase punishments for various felony child abuse offenses; enter child abuse finding on judgment.** Effective for offenses committed on or after December 1, 2013, the act amends G.S. 14-318.4 to increase punishments for various felony child abuse offenses as follows: (1) from a Class E to a Class D felony for serious physical injury under subsection (a); (2) from a Class E to a Class D felony for an act of prostitution under subsection (a1); (3) from a Class E to a Class D felony for a sexual act under subsection (a2); (4) from a Class C to a Class B2 felony for serious bodily injury or impairment of mental or emotion function under subsection (a3); and (5) from a Class H to a Class G felony for a willful act or grossly negligent omission showing reckless disregard for human life under subsection (a5). Effective for judgments entered on or after December 1, 2013, the act amends G.S. 15A-1382.1 to provide that when a defendant is found guilty of (1) an offense involving child abuse, or (2) an offense involving assault or any of the acts defined in G.S. 50B-1(a) (acts of domestic violence) and the offense

was committed against a minor, the judge must indicate on the judgment form that the case involved child abuse. The clerk of court must ensure that the official record of the defendant's conviction includes the court's determination, so that any inquiry will reveal that the offense involved child abuse.

9. **S.L. 2013-41 (H 388): Docketing judgments for attorneys' fees for partially indigent defendants.** G.S. 7A-455 provides that if an indigent person is financially able to pay a portion of the value of legal services rendered by assigned counsel, the public defender, or the appellate defender, and other necessary expenses, the court must order the partially indigent person to pay that portion to the clerk of superior court for transmission to the State treasury. The act, effective May 2, 2013, (1) amends G.S. 7A-455(c), which provides that a judgment must be docketed on the later of (i) the date the conviction becomes final if the indigent person is not ordered as a probation condition to pay for the costs of counsel, or (ii) the date on which the indigent's person probation is terminated, revoked, "or expires" (act adds quoted language); and (2) amends G.S. 7A-455(d) to require specified attorneys and guardian ad litem to make "reasonable efforts" (act adds quoted language) to obtain the social security number of the person against whom a judgment is entered, and adds to the required certification in the application for services rendered by them that the social security number cannot be obtained with reasonable efforts.

10. **S.L. 2013-42: Name change requirements.** Amends G.S. 101-2(d) to allow an application for changing the name of a minor child to be filed without the consent of both living parents for three reasons, including that a parent may file an application on behalf of the minor without the consent of the other parent who has been convicted of a: (a) felony or misdemeanor child abuse; (b) indecent liberties with a minor under G.S. 14-202.1; (c) rape or any other sexual offense under Article 7A of G.S. Chapter 14; (d) incest under G.S. 14-78; or (e) assault, communicating a threat, or any other crime of violence. Amends G.S. 101-5(a)(2) to require that a state or national criminal history record check for an application of a person who wants to change his or her name be conducted within 90 days of the date of the application by the SBI, FBI, or a Channeler approved by the FBI, but this requirement does not apply to a name change application for a minor less than 16 years old. Amends G.S. 101-5(e)(1) to provide that if the name change is not a public record under G.S. 101-2(c) (applicant is a participant in address confidentiality under G.S. Chapter 15C or is a victim of domestic violence, sexual offense, or stalking), the clerk must notify the State Registrar, but the State Registrar must not notify the register of deeds in the applicant's county of birth or the registration office of the state of birth. Effective for applications for name changes filed on or after October 1, 2013.

11. **S.L. 2013-47 (S 117): Murder under G.S. 14-17 includes when child who is born alive but dies from injuries inflicted before child's birth.** Effective for offenses committed on or after December 1, 2013, the act amends G.S. 14-17 to provide that it shall constitute murder when a child is born alive but dies as a result of injuries inflicted before the child was born alive (the act essentially codifies existing common law). Provides that prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and statutes and the common law that would be applicable but for this act shall remain applicable to offenses not described in the act, whether the offense is charged due to a child being born alive and who dies or who is born alive with injuries resulting from injuries inflicted before being born alive. Also provides that the act shall not be construed to apply to an unintentional act or omission committed by the child's birth mother during the pregnancy that culminated in the child's birth.

12. **S.L. 2013-52 (H 149): Criminalizing failure to report missing child or child victim and other acts.** Effective for offenses committed on or after December 1, 2013, the act creates various offenses that

criminalize the failure to report a missing child or child victim and other acts.

Failing to report disappearance of child to law enforcement. Adds new G.S. 14-318.5 to provide that a parent or any other person providing care to or supervision of a child who knowingly or wantonly fails to report the disappearance of a child under 16 years old to law enforcement commits a Class I felony. A person who reasonably suspects the disappearance of a child under 16 years old and reasonably suspects the child may be in danger must report those suspicions to law enforcement within a reasonable time; a violation of this duty to report is a Class 1 misdemeanor. The term "disappearance of a child" means that the parent or other person providing supervision of a child does not know the location of the child and has not had contact with the child for a 24-hour period. Provides that if a child is absent from school, a teacher is not required to report the child's absence to law enforcement under this statute if the teacher complies with the reporting provisions under Article 26 of G.S. Chapter 115C.

"Grossly negligent omission" in felony child abuse offenses. Amends G.S. 14-318.4 (felony child abuse offenses) to provide that "grossly negligent omission," a term used in some of the offenses, includes the failure to report a child as missing to law enforcement under G.S. 14-318.5.

Child care facility report of missing child. Amends G.S. 110-102.1(a), which requires child care facility operators and staff to immediately report a missing child to law enforcement, (1) to change the age of the child from under 18 years old to under 16 years old, and (2) to make clear that the duty to report in this statute exists notwithstanding the provisions of G.S. 14-318.5.

Failing to notify law enforcement of death of child or secretly burying child. Adds new subsection (a1) to G.S. 14-401.22 to provide that a person who, with the intent to conceal the death of a child under 16 years old, fails to notify a law enforcement authority of the death or secretly buries or otherwise secretly disposes of a dead child's body commits a Class H felony. Also provides that a person who violates subsection (a1), knowing or having reason to know the body or human remains are of a person who did not die of natural causes, commits a Class D felony.

Amendments to offense of false reports to law enforcement agencies or officers. Amends G.S. 14-225 (false reports to law enforcement agencies or officers) to make the Class 2 misdemeanor offense apply to any false, deliberately misleading or unfounded report (underlined word added). Provides that a violation of the statute is a Class H felony if the false, deliberately misleading, or unfounded report relates to a law enforcement investigation involving the disappearance of a child under 16 years old as provided in G.S. 14-318.5 (see summary of this new statute above) or a child victim of a Class A, B1, B2, or C felony offense.

Criminal offenses created for failing to report abuse, neglect, etc. Amends G.S. 7B-301 (duty to report abuse, neglect, dependency, or death due to maltreatment) to provide that a person or institution who knowingly or wantonly fails to report the case of a juvenile as required by the statute, or who knowingly or wantonly prevents another person from making a required report, commits a Class 1 misdemeanor. Also provides that a director of social services who receives a report of sexual abuse of a juvenile in a child care facility and who knowingly fails to notify the State Bureau of Investigation of the report commits a Class 1 misdemeanor.

13. **S.L. 2013-53 (S 91): Expunctions and applications for employment and admission to educational institutions.** Effective May 17, 2013, this act amends G.S. 15A-145.4 (expunction of records for first offenders under 18 years old at time of commission of nonviolent felony) and G.S. 15A-145.5 (expunction of certain misdemeanors and felonies; no age limitation) to provide that a person whose administrative action has been vacated by an occupational licensing board pursuant to an expunction under these statutes may then reapply for licensure and must satisfy the board's then current education and preliminary licensing requirements to obtain licensure.

    Effective December 1, 2013, this act adds new G.S. 15A-153 with the following provisions. Subsection (b) protects against prosecutions for perjury or false statements for failing to acknowledge specified

expunged information except as provided in subsection (e). Subsection (c) prohibits an employer or educational institution from requiring in an application for employment or admission, interview, or otherwise, that an applicant provide information about an arrest, criminal charge, or criminal conviction that has been expunged. This provision does not apply to any state or local law enforcement agency authorized under G.S. 15A-151 to obtain confidential information for employment purposes. Subsection (d) requires a state or local government that requests disclosure of information from an applicant for employment about an arrest, criminal charge, or criminal conviction to first advise the applicant that state law allows the applicant to not refer to an arrest, charge, or conviction that has been expunged. An application shall not be denied solely because of the applicant's refusal or failure to disclose expunged information. Subsection (e) provides that the provisions of subsection (d) do not apply to an applicant or licensee seeking or holding any certification issued by the Criminal Justice Education and Training Standards Commission or the Sheriffs Education and Training Standards Commission; it specifically requires a person pursuing certification to disclose felony convictions expunged under G.S. 15A-145.4 and all convictions expunged under G.S. 15A-145.5. Subsection (f) provides for civil penalties for employer violations of subsection (c), effective for violations that occur on or after December 1, 2013. Provides that G.S. 15A-153 shall not be construed to create a private cause of action against any employer or its agents or employees, educational institutions or their agents or employees, or state or local government agencies, officials, or employees.