

2009 LEGISLATION OF INTEREST TO COURT OFFICIALS

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Civil Law & Procedure

- 1. S.L. 2009-246 (H 630).** Amends the procedure for service of process in a summary ejectment action to provide that the summons must be served upon the defendant at least two days prior to the hearing. The two days may not include legal holidays. Effective October 1, 2009.
- 2. S.L. 2009-269 (S 586).** G.S. 1-116(a) requires that persons who seek to hold others to constructive notice of pending litigation in certain types of cases must file a separate notice of pending litigation (lis pendens) with the clerk of court. This law broadens the section to require filing of lis pendens in actions seeking injunctive relief under Chapter 113A for erosion and sedimentation control in land-disturbing activities. Effective October 1, 2009, and applies to actions filed on or after that date.
- 3. S.L. 2009-279 (S 661).** G.S. 42-34(b) sets out the procedure for a tenant to stay execution of a magistrate's order of summary ejectment during the pendency of an appeal to district court. Among other requirements, a tenant must sign an undertaking with the clerk of court to continue paying the contract rent rate as it comes due. If the tenant or landlord disputes the terms of the undertaking, the aggrieved party may move the clerk for a modification, and the clerk must hold a hearing within 10 days. The statute has now been modified, effective October 1, 2009, to make it clear that no writ of possession or other execution of the magistrate's judgment may take place during the time the motion for modification is pending.
- 4. S.L. 2009-325 (S 285).** Repeals Article 18 of Chapter 1C of the General Statutes and replaces it with a new Uniform Foreign-Country Money Judgments Recognition Act as recommended by the General Statutes Commission. Among the changes to the law are

authorization to reject a foreign-country judgment because circumstances raise doubt about the integrity of the rendering court or because the proceeding was fundamentally unfair; clarification of the procedure for seeking recognition and the burden for recognition or non-recognition; and inclusion of a statute of limitations specifying that action for recognition must be filed while judgment is effective in a foreign country or within ten years from when it became effective there. Effective October 1, 2009.

5. **S.L. 2009-359 (H 629).** Amends the procedure for service of process in a small claims action to provide that the magistrate must order a continuance if the magistrate summons was not served upon the defendant at least five days prior to the date of the hearing. This section is not applicable to summary ejectment actions (see S.L. 2009-246, summarized above). Effective October 1, 2009.
6. **S.L. 2009-400 (H 1110).** Enacts G.S. 52-13, placing certain limits on alienation of affection and criminal conversation actions. No act of a defendant that occurs after the plaintiff and spouse separate with the intent of either of them to remain separated may form the basis for either of these causes of action. In addition, neither action may be commenced later than three years after the last act of the defendant that forms the basis for the action. Finally, these causes of action only may be brought against a natural person. Applies to actions arising from acts occurring on or after October 1, 2009.
7. **S.L. 2009-417 (H 1058).** Amends G.S. 1C-1601(a) to increase to \$35,000 the statutory exemption from enforcement of judgments applicable to a debtor's place of residence. Previously the exemption was limited to \$18,500. Increases the exemption applicable to the residence of an unmarried person over age 65 from \$37,000 to \$60,000, as long as the property was previously held with the person's spouse by the entirety or in a joint tenancy with right of survivorship. Effective December 1, 2009.
8. **S.L. 2009-420 (S 882).** Adds a new section, G.S. 1-46.1, stating that actions to recover damages for personal injury, death, or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall not be brought more than to 12 years from the date of initial purchase of the product for use or consumption. The section does not affect application of G.S. 1-50(a)(5), relating to damages based on defective or unsafe conditions of an improvement to real property, nor is it intended to change existing law relating to product liability actions based upon disease. Effective October 1, 2009, and applies to actions accruing on or after that date.
9. **S.L. 2009-515 (H 806).** Amends the notice requirements for claims of lien by homeowners and condominium owners associations. G.S. 47F-3-116 and 47C-3-116 now require an association to make reasonable and diligent efforts to locate the lot owner's current mailing address and to provide a 15-day advance notice of the amount due by first class mail to the owner's lot address, address on record, and county tax record address. If the lot owner is a corporation, the statement also must be sent to the registered agent's address. In addition, the first page of the claim of lien must contain the following statement in bold print, capital letters, with a minimum font size: "This document constitutes a lien against your property, and if the lien is not paid, the homeowners association may proceed with foreclosure against your property in like manner as a mortgage under North Carolina Law." The association also must attempt service of the claim of lien by the methods set forth in Rule 4(j) of the Rules of Civil Procedure and must file the claim of lien with a certificate of service. If Rule 4 service is unsuccessful, the association will be deemed to have met the requirements for service if service was

attempted in the methods set forth in Rules 4(j)(1) c., d., or e. [4(j)(3) to (9) if the owner is not an individual]; and by mailing a copy of the lien to the same addresses required for the pre-filing notice. Effective October 1, 2009, and applies to claims of lien filed on or after that date.

10. **S.L. 2009-573 (S 974).** Changes the clerk's foreclosure hearing under G.S. 45-21.16 to include a new step designed to provide an opportunity for a debtor in a primary residence and the mortgagee to resolve the debt prior to an order authorizing the sale. Requires the clerk, prior to the hearing, to determine what efforts the mortgagee, trustee, or servicer has made to resolve the matter voluntarily prior to filing the foreclosure proceeding, unless such entity has already submitted an affidavit describing those efforts. The clerk must continue the hearing for not more than 60 days if there is good cause to believe the extra time would facilitate a resolution. Provides a list of factors for the clerk to consider in making this determination. Provides that, upon appeal of a clerk's order of sale of a primary residence, the clerk shall set a bond in the amount of 1% of the principal amount of the debt, and the clerk may set the bond lower in cases of hardship and higher in cases of probable waste or damage to the property. If this ratified bill becomes law, it will be effective October 1, 2009, and apply to foreclosures initiated, debt collection activities undertaken, and actions filed on or after that date

Estates & Special Proceedings

1. **S.L. 2009-131 (S 724).** Clarifies the effect upon the administration of an estate of the filing of a will caveat. Amends G.S. 31-36 to require that the clerk's order specifically provide that there be no distribution of assets to the beneficiaries; that no commissions be paid; that the administrator file accountings and pay fees as required by statute; that the administrator preserve the property and pursue claims by the estate; and that the administrator pay certain taxes and other debts and fees related to the estate administration. If the administrator intends to pay any debts or fees owed by the estate, he or she must file a notice of intent with the clerk, served pursuant to Rule 4, and if the interested parties object, the clerk must hold a hearing to resolve the conflict. The clerk may approve the payment if there are no objections, and also may defer ruling until the caveat is resolved. Disputes regarding the preservation of the assets also may be heard and resolved by the clerk during the pendency of the caveat, and the clerk's decisions may be appealed to superior court. Effective October 1, 2009, and applies to estates of those dying on or after that date.
2. **S.L. 2009-175 (H 203).** Article 25 of Chapter 28 provides a special summary procedure for the administration of certain small estates. Amends G.S. 28A-25-1(a) to increase the size of an estate that may be administered under this section to \$20,000 or less in value, or \$30,000 or less in the case of a surviving spouse entitled to the entire estate. The previous limits were \$10,000 and \$20,000. Effective October 1, 2009, and applies to estates of those dying on or after that date.
3. **S.L. 2009-183 (H 312).** Increases the amount of the one-year allowance to which a surviving spouse of a decedent is entitled under Chapter 30 from \$10,000 to \$20,000. Effective January 1, 2010, and applies to estates of those dying on or after that date.
4. **S.L. 2009-309 (S 605).** G.S. 35A-1232 provides that the bond that must be paid by a general guardian or guardian of a ward's estate may be reduced if the ward's estate contains money deposited in accounts that only may be accessed with the court's

authorization. Amends that section to broaden the institutions whose accounts qualify to include any “financial institution,” defined as “a bank, savings and loan association, credit union, trust company, or registered securities broker or dealer.” Effective October 1, 2009.

5. **S.L. 2009-362 (H 581).** Amends the procedures in partition actions under Chapter 46 to provide that respondents now have 30 days, rather than 10, to respond to a summons; that the notice included in the petition must reasonably inform the respondent of the right to seek advice of counsel and that the court may award attorney fees; that the commissioners now have up to 90 days, rather than 60, to make their report to the clerk of court; that the clerk’s order of confirmation is final 15 days after entry; and that a party may appeal the clerk’s order within 10 days after it becomes final. Effective October 1, 2009.
6. **S.L. 2009-512 (H 578).** Makes further changes to the procedures for partition actions under Chapter 46 as follows:
 - Notices of the hearing by publication to unknown or unlocatable parties must now include a description of the property;
 - The clerk’s appointment of a disinterested representative for unknown or unlocatable parties is now required and not discretionary.
 - In determining whether the property is to be sold due to likelihood of substantial injury, the court must consider evidence in favor of a sale and in favor of actual partition presented by any interested party.
 - The term “in-kind division” is replaced by “actual partition” in the factors to be considered by the clerk in determining whether the likelihood of substantial injury exists.
 - The clerk is required to consider the remedy of owelty where it would aid in facilitating an actual partition;
 - The clerk is required to make specific findings of fact and conclusions of law to support an order;
 - Mediation is provided as a means of alternative dispute resolution that may be requested by the parties or ordered by the clerk; and
 - The credits to which a high bidder for the undivided interest is entitled are specified in a new section G.S. 46-28(c).Effective October 1, 2009, and applies to partition actions filed on or after that date.

Criminal Law & Procedure

1. **S.L. 2009-6 (S 5).** Adds new G.S. 14-406.1 and amends G.S. 14-402(c) and 14-406 to allow a manufacturer, wholesale dealer, or retailer of crossbows to obtain from the sheriff a continuing permit for purchase or receipt of crossbows. Changes record-keeping requirements. Effective March 19, 2009.
2. **S.L. 2009-15 (H 105).** Amends the Interstate Wildlife Violator Compact to include violations of marine resources law by amending subdivision (15) of Article II of G.S. 113-300.6 to include within definition of “wildlife” all species of animals that are protected or regulated by the Wildlife Resources Commission, the Marine Fisheries Commission, or the Division of Marine Fisheries in the Department of Environment and Natural Resources. Effective October 1, 2009.

3. **S.L. 2009-20 (H 613).** Amends G.S. 104-7 to provide that the consent of the State of North Carolina is not granted to the United States for acquisition of land for an outlying landing field in a county or counties that have no existing military base at which aircraft squadrons are stationed. Exclusive jurisdiction is not ceded to the United States for any purpose. Effective April 30, 2009.
4. **S.L. 2009-25 (H 97).** Amends G.S. 113-276 to provide that North Carolina residents who are serving on full-time active military duty outside North Carolina in the armed forces of the United States or a reserve component may hunt or fish while on leave in North Carolina without obtaining a license. Effective July 1, 2009.
5. **S.L. 2009-37 (H 616).** Adds new G.S. 14-86.2 to make it a Class 1 misdemeanor to steal, destroy, deface, or vandalize portable toilets or pumper trucks. Effective for offenses committed on or after December 1, 2009.
6. **S.L. 2009-38 (H 1272).** See the summary of this session law under Juvenile Law, below.
7. **S.L. 2009-49 (H 85).** Amends G.S. 14-309.15 to increase raffle prize limits from \$50,000 to \$125,000 and to allow real property worth up to \$500,000 to be offered as a raffle prize. Effective June 1, 2009.
8. **S.L. 2009-58 (S 617).** Amends G.S. 14-415.12(b)(8) (concealed handgun permit), 15A-266.4(b)(3) (DNA testing for certain convictions), 15A-830(a)(7) (crime victims' rights), 15C-2(12) (address confidentiality for victims), 50B-1(a)(2) (domestic violence definition), 50C-1(6) (definition for civil no-contact orders), and 95-260(3)b. (workplace violence prevention definition) to insert new stalking statutory citation (G.S. 14-277.3A) and make other modifications. Effective June 5, 2009.
9. **S.L. 2009-86 (H 1039).** Requires the Administrative Office of the Courts (AOC) to revise the transcript of plea form to: (1) more clearly inform a defendant that G.S. 15A-1444 imposes limitations on the right to appeal when a defendant pleads guilty or no contest (specifies precise language to be used); and (2) more clearly inform a defendant that under G.S. 15A-268 there may be a shorter preservation period for biological evidence when a defendant pleads guilty (specifies precise language to be used). Requires the AOC to revise the form by September 1, 2009, and the form must be made available for guilty or no contest pleas entered on or after October 1, 2009.
10. **S.L. 2009-89 (H 1118).** Standardizes the wild boar hunting season by amending G.S. 113-129 to include a definition of a wild boar and deletes various local legislative acts listed in G.S. 113-133.1(e). Effective October 1, 2009.
11. **S.L. 2009-91 (H 1037).** Adds new G.S. 7A-451(e1) to require Department of Correction, on the day an opinion or decision is filed or issued in a death sentence case, federal or state, to permit counsel for the defendant to visit the defendant at the institution in which the defendant is confined. Effective June 11, 2009.
12. **S.L. 2009-93 (H 1327).** Adds new G.S. 14-50.27A to allow a law enforcement agency to disseminate an assessment of criminal intelligence information to the principal of a public or private school when necessary to avoid imminent danger to the life of a student or employee or to public school property. Effective December 1, 2009.

13. **S.L. 2009-94 (H 1109).** Amends G.S. 160A-288(d) to enable company police agencies of the Department of Agriculture and Consumer Services to enter into mutual aid agreements with other law enforcement agencies. Effective June 11, 2009.
14. **S.L. 2009-99 (H 1198).** Amends Sec. 33, S.L. 2007-493 to clarify that people who had a three-year waiting period for a hearing on conditional restoration of a revoked license when the law [G.S. 20-19(i), revocation for DWI involving fatality] was changed to a five-year waiting period were not affected by the change. Effective June 12, 2009.
15. **S.L. 2009-106 (H 266).** Adds new G.S. 114-10.02 to require Division of Criminal Statistics to collect, maintain, and annually publish the number of deaths, by law enforcement agency, resulting from the use of deadly force by law enforcement officers (state and local) in the course and scope of their official duties. Effective for uses of deadly force resulting in death on or after January 1, 2010.
16. **S.L. 2009-107 (H 43).** Amends G.S. 14-230 (willfully failing to discharge duties) to add school board members to the statute's provisions. Effective December 1, 2009.
17. **S.L. 2009-120 (S 1011).** Amends G.S. 113-291.6 and 113-291.9(c) governing the sizes of traps for taking wild animals. Effective October 1, 2009.
18. **S.L. 2009-135 (H 9).** See the summary of this session law under Motor Vehicle Law, below.
19. **S.L. 2009-146 (S 256).** Amends G.S. 14-288.12(b)(1) and 166A-14(a) to provide that: (1) cities and counties [under G.S. 14-288.13(b)] have the authority to enact ordinances to permit the imposition of prohibitions and restrictions during a state of emergency, including the movements of people in public places, such as "directing and compelling the evacuation of all or part of the population from any stricken or threatened area within the governing body's jurisdiction, to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of a disaster area, and the movement of people within the area" (quoted language is new); and (2) the emergency management immunity statute applies to these activities. Effective June 19, 2009.
20. **S.L. 2009-147 (H 440).** See the summary of this session law under Motor Vehicle Law, below.
21. **S.L. 2009-179 (H 315).** Amends G.S. 15A-1023(b) to provide that if a judge rejects a plea arrangement disclosed in open court under G.S. 15A-1023(a), the judge must order that the rejection be noted on the plea transcript, which must be made part of the record. Makes a conforming change to G.S. 15A-1026. Effective for pleas accepted on or after December 1, 2009.
22. **S.L. 2009-200 (H 323).** Makes various amendments to G.S. 66-11 (dealing in regulated metals property). Among them are: (1) requires a secondary metals recycler to issue a receipt to a person delivering regulated metals property for all purchase transactions in which the recycler purchases such property; a recycler must provide documentation concerning the employee who completed the transaction; (2) in transactions involving catalytic converters not attached to a vehicle and central air conditioner evaporator coils or condensers, sets out requirement for index finger impression or fingerprint of a

deliverer; (3) allows a law enforcement officer to inspect both (current law, either) regulated metals property and records; (4) sets out new limitations on secondary metals recyclers concerning purchases of various types of property; (5) exempts purchases of regulated metals property that involve only beverage containers. Effective for purchases and offers of purchase that occur on or after October 1, 2009.

- 23. S.L. 2009-203 (H 1190).** Makes various amendments to statutes concerning the preservation of DNA and biological evidence and the defendant's access to that evidence (G.S. 15A-166.1 through 15A-270.1). Among them are: (1) amends G.S. 15A-267(a) to provide that a defendant shall have pretrial access to a complete inventory of all physical evidence collected in connection with the investigation; (2) amends G.S. 15A-267(c) to make a court order for DNA testing based on a defendant's pretrial motion mandatory instead of discretionary; (3) amends G.S. 15A-268 to require the SBI to promulgate and publish minimum guidelines that meet the requirements for retention and preservation of biological evidence; (4) amends G.S. 15A-268 to set out certain responsibilities of the presiding judge when physical evidence is offered or admitted into evidence in a criminal proceeding; (5) amends G.S. 15A-268 to provide that the duty to preserve biological evidence may not be waived by a defendant without a court proceeding; (6) amends G.S. 15A-268 to make several changes to the duration for which biological evidence must be preserved; (7) amends G.S. 15A-268 to provide that if a court finds that destruction of evidence required to be preserved violated the defendant's due process rights, the court must order an appropriate remedy, which may include dismissal of charges; (8) amends G.S. 15A-268 to make it a Class I felony (if the evidence is for noncapital crime) or a Class H felony (if the evidence is for first-degree murder) when a person knowingly and intentionally destroys, alters, etc., evidence that is required to be preserved with the intent to impair the integrity of that evidence, prevent it from being subjected to DNA testing, or prevent production or use of that evidence in a proceeding; (9) amends G.S. 15A-269 to provide that if a court orders postconviction DNA testing, the testing must be conducted by an SBI-approved testing facility; (10) amends G.S. 15A-270.1 to provide that the court must appoint counsel for an indigent defendant who appeals an order denying the defendant's motion for DNA testing; and (11) establishes Joint Select Study Committee on the Preservation of Biological Evidence with specified membership and duties. Effective December 1, 2009, except the establishment of the study committee is effective June 26, 2009.
- 24. S.L. 2009-204 (H 787).** Adds new G.S. 14-160.2 to make it a Class H felony to (1) alter, deface, destroy, or remove the permanent serial number, manufacturer's identification plate, or other permanent distinguishing number or identification mark from any firearm with the intent to conceal or misrepresent the firearm's identity; or (2) knowingly sell, buy, or possess such a firearm. Effective for offenses committed on or after December 1, 2009.
- 25. S.L. 2009-205 (H 722).** Adds new Article 5F to Chapter 90 of the General Statutes to regulate certain devices (glass tubes or splitters) that may be used as drug paraphernalia. Provides that a retailer or employee of the retailer who willfully and knowingly violates the statutory requirements commits a Class 2 misdemeanor, and a person who knowingly makes a false statement commits a Class 1 misdemeanor. Effective for offenses committed on or after December 1, 2009.
- 26. S.L. 2009-226 (H 682).** Amends subdivision (d1)(1) of G.S. 14-234 (public officers or employees benefitting from public contracts) to increase monetary amounts. Effective

October 1, 2009.

27. **S.L. 2009-230 (S 652).** Adds new G.S. 66-16.1 to prohibit the retail sale of novelty lighters as defined in the statute. A violation is an infraction subject to a \$500 penalty for each violation. Effective for infractions committed on or after December 1, 2009.
28. **S.L. 2009-255 (H 309).** Amends S.L. 2008-158 to remove June 30, 2009, sunset provision for session law and thus makes permanent the session law's amendment to G.S. 14-344 (sale of admission tickets in excess of printed price), enactment of G.S. 14-344.1 (Internet sale of admission tickets in excess of printed price), and enactment of G.S. 14-344.2 (prohibition on ticket purchasing software). Effective July 6, 2009.
29. **S.L. 2009-270 (H 1438).** Requires the Administrative Office of the Courts (AOC), in consultation with the Department of Correction (DOC), to conduct a pilot program in two counties and one DOC prison facility to test the feasibility of using videoconferencing or similar technology to conduct court proceedings involving defendants in DOC custody instead of requiring live court appearances for those defendants. Authorizes the AOC to conduct a similar pilot program involving defendants in the custody of local confinement facilities. Courts participating in the pilot programs may conduct proceedings under G.S. 15A-511 (initial appearance), Article 26 (bail) of G.S. Chapter 15A, and G.S. 15A-941 (arraignment) without a defendant's consent. If a defendant consents, a court also may accept guilty pleas and impose sentences based on a guilty plea and conduct hearings on motions and probation proceedings. Excludes capital cases. Effective July 1, 2009.
30. **S.L. 2009-275 (S 1089).** Amends G.S. 15A-1343(g) to allow a probation officer to transfer a misdemeanant from supervised to unsupervised probation if the misdemeanant is not subject to any special conditions and was placed on probation solely for the collection of court-ordered payments, and the risk assessment shows the misdemeanant to be a low-risk offender. Effective July 1, 2009.
31. **S.L. 2009-282 (S 43).** Adds new G.S. 75A-16.2 to prohibit the operation of a vessel on public waters with a motor of ten horsepower or more unless the operator has met the requirements for boating safety education. A violation is an infraction requiring payment of court costs but no penalty. Effective May 1, 2010.
32. **S.L. 2009-300 (H 885).** Adds new G.S. 14-277.4A to make it a Class 2 misdemeanor to engage in "targeted picketing" (defined in the statute) when the person knows or should know that the manner in which the person is picketing would cause a reasonable person any of the following: (1) fear for the person's safety or the safety of the person's immediate family or close personal associates; or (2) "substantial emotional distress" as defined in G.S. 14-277.3A(b)(4). Effective for offenses committed on or after December 1, 2009.
33. **S.L. 2009-307 (H 1132).** Amends G.S. 14-415.6 to make several changes concerning the process of renewing concealed handgun permit. Amends G.S. 14-415.10(4)b. to include within definition of "qualified former sworn law enforcement officer" a person who has 20 or more aggregate years of part-time or auxiliary law enforcement service (which effectively will provide the person with an exemption from the firearms safety and training course requirement for a concealed handgun permit). Effective for permit applications and renewal applications submitted on or after January 1, 2010.

34. **S.L. 2009-315 (H 1189).** Amends G.S. 122C-261(d) (involuntary commitment of mentally ill) to require a physician or eligible psychologist to contact the local management entity that serves the county where the respondent resides or the local entity that coordinated services for the respondent to inform the entity that the respondent has been scheduled for an appointment with an outpatient treatment physician or center. Amends G.S. 122C-263(c) to provide that an examination by a physician or eligible psychologist under subsection (a) (first examination) either may be in the physical face-to-face presence of the physician or eligible psychologist or may be done utilizing telemedicine equipment and procedures as specified in the statute. Effective July 17, 2009.
35. **S.L. 2009-317 (H 447).** Extends the exemption in G.S. 7A-308(b1) from statutory copy costs to an attorney who is under contract with the Office of Indigent Defense Services. Effective July 17, 2009.
36. **S.L. 2009-327 (S 674).** Makes various changes to rabies laws (G.S. 130A-184 through -199), including adding ferrets to the list of animals (dogs and cats) that must be vaccinated and allowing stray or feral animals to be euthanized and tested after biting a human being. Effective October 1, 2009.
37. **S.L. 2009-328 (S 584).** Makes various changes to the private protective services laws in Chapter 74C of the General Statutes, including criminal record checks. Effective October 1, 2009.
38. **S.L. 2009-335 (S 817).** See the summary of this session law under Judicial Authority & Administration, below.
39. **S.L. 2009-336 (S 65).** Amends G.S. 14-202.3 (soliciting child by computer to commit unlawful sex act) to: (1) include solicitation by a computer or “any other device capable of electronic data storage or transmission”; and (2) change the age difference between the child and the defendant to at least five years (current law, three years). Effective for offenses committed on or after December 1, 2009.
40. **S.L. 2009-340 (H 243).** Amends G.S. 122C-263(d)(2) to provide that under certain circumstances if a 24-hour facility is not immediately available or appropriate to the respondent’s medical condition, the respondent may be temporarily detained under appropriate supervision at the site of the first examination. Effective October 1, 2009.
41. **S.L. 2009-342 (H 115).** Adds new subsections to G.S. 50B-4 and 50B-4.1 to provide that a “valid protective order” as used in these statutes includes an emergency or ex parte order entered under Chapter 50B of the General Statutes. Effective July 24, 2009. [For an analysis of these changes by School of Government faculty member John Rubin, see the online memorandum available at <http://www.sog.unc.edu/programs/crimlaw/Byrd2.pdf>.]
42. **S.L. 2009-344 (S 307).** Makes numerous changes to the statutes regulating certain reptiles, G.S. 14-416 through 14-422. Effective for offenses committed on or after December 1, 2009.
43. **S.L. 2009-348 (S 764).** Amends G.S. 14-90 (embezzlement) to include as a fiduciary a settlement agent as defined in G.S. 45-3. Effective for offenses committed on or after

December 1, 2009.

- 44. S.L. 2009-349 (S 1076).** Amends G.S. 143B-273.4 (eligible population for criminal justice partnership program) to include as an eligible offender a defendant who was convicted of a misdemeanor or a felony and received a nonincarcerative community punishment sentence, if the Division of Community Corrections determines that the defendant would benefit from program participation based on the results of a risk assessment. Effective December 1, 2009.
- 45. S.L. 2009-351 (H 23).** Amends various provisions of Chapter 95 of the General Statutes to increase the criminal and civil penalties for violations of child labor laws. Effective for offenses and violations committed on or after December 1, 2009.
- 46. S.L. 2009-354 (H 1342).** Repeals G.S. 143B-480.2 and revises G.S. 143B-480.1 to provide free forensic medical examinations for victims of rape and sex offenses as specified in the statute. Amends G.S. 15B-10 to raise from \$7,500 to \$12,500 the maximum amount for which the Director of the Crime Victims Compensation Commission must decide an award of compensation for an initial claim or follow-up claim that does not include future economic loss. Amends G.S. 15B-11 to require a denial of a claim for compensation if there was contributory misconduct that was a proximate cause of becoming a victim; however, contributory misconduct that was not a proximate cause of becoming a victim shall not lead to an automatic denial of a claim for compensation. Effective July 27, 2009.
- 47. S.L. 2009-355 (S 1017).** Makes numerous changes to G.S. 75-63 (security freeze on consumer's credit report) and G.S. 75-65 (protection from security breaches). Adds new G.S. 132-1.10(f1) to provide that without a request made under subsection (f), a register of deeds or clerk of court may remove from an image or copy of an official record placed on their Internet Web sites (and other specified sites) available to the general public a person's social security or driver's license number contained in the official record. Adds new G.S. 15B-26 to provide that a creditor owed money for services provided to a victim as a result of criminally injurious conduct inflicted on the victim shall not communicate any information about the debt to a consumer reporting agency during the pendency of an application for a victim compensation award filed under G.S. 15B-7 or during the pendency of an appeal from a decision related to such an application. Effective October 1, 2009.
- 48. S.L. 2009-356 (H 192).** Adds new G.S. 15A-1225.1 to provide that in a criminal or delinquency proceeding, a child who has been found competent to testify may testify other than in an open forum when the court determines: (1) the child witness would suffer serious emotional distress, not by the open forum in general, but by testifying in the defendant's presence; and (2) the child's ability to communicate with the trier of fact would be impaired. The method used for remote testimony shall allow the judge, jury, and defendant or juvenile respondent to observe the child's demeanor as the child testifies in a similar manner as if the child were in an open forum. Specifies an evidentiary hearing on motion for remote testimony and content of a judge's order allowing the motion, the role of defense counsel, and the use of remote testimony if a defendant is not represented by counsel. Provides that this statute is a nonexclusive procedure. Effective December 1, 2009, and applies to any hearings or trials held on or after that date. Provides that the session law does not abrogate (1) any judicial rulings or decisions before December 1, 2009, that allowed or disallowed witness testimony in any

- criminal proceeding; or (2) any judicial rulings that prohibit a psychological evaluation of an unwilling witness.
49. **S.L. 2009-360 (H 937).** Amends G.S. 15A-1468 to provide that the North Carolina Innocence Commission may compel the testimony of a witness and grant limited immunity under certain circumstances. Effective July 27, 2009.
 50. **S.L. 2009-369 (H 1185).** See the summary of this session law under Motor Vehicle Law, below.
 51. **S.L. 2009-372 (S 920).** Makes numerous changes to probation laws, effective in different ways on December 1, 2009. A summary and analysis of this session law by School of Government faculty member Jamie Markham is available at <http://www.sog.unc.edu/programs/crimlaw/faculty.htm> at the link entitled, “Probation Reform: Summary and Analysis of S.L. 2009-372 (S 920).”
 52. **S.L. 2009-379 (H 1256).** Adds new G.S. 14-72.8 to provide that unless the conduct is covered under some other provision of law providing greater punishment, larceny of a motor vehicle part is a Class I felony if the cost of repairing the motor vehicle is \$1,000 or more. Effective for offenses committed on or after December 1, 2009.
 53. **S.L. 2009-380 (H 1255).** Adds new G.S. 15A-1340.50 to provide that when sentencing a defendant convicted of a sex offense (any offense that requires registration under Article 27A of Chapter 14 of the General Statutes), the judge, at the request of the district attorney, shall determine whether to issue a permanent no contact order against the defendant prohibiting contact with the victim. Effective for offenses committed on or after December 1, 2009.
 54. **S.L. 2009-387 (H 506).** Amends G.S. 7A-451(a) to provide that an indigent person is entitled to the appointment of counsel for a proceeding involving placement into satellite monitoring under Part 5, Article 27A of Chapter 14 of the General Statutes. Amends G.S. 14-208.40B to require the district attorney to represent the Department of Correction at a hearing on satellite monitoring. Amends G.S. 7A-451(c) to provide that the Office of Indigent Services, instead of a superior court judge, appoint counsel for an indigent defendant sentenced to death in litigation involving a motion for appropriate relief. Effective July 31, 2009.
 55. **S.L. 2009-389 (H 1464).** States that despite the ruling in *Cockerham-Ellerbee v. Town of Jonesville*, 176 N.C. App. 372 (2006) [court ruled that in absence of specific legislative intent to mandate law enforcement action, an arrest is discretionary under G.S. 50B-4.1(b) (“shall” arrest for violation of a domestic violence protective order)], G.S. 50B-4.1(b) creates a mandatory provision requiring a law enforcement officer to arrest and take a person into custody without a warrant or other process if the requirements set forth in the subsection are met. Amends G.S. 50B-4.1(b) to clarify that the duty to arrest also applies when an officer has a warrant. Effective July 31, 2009.
 56. **S.L. 2009-398 (H 1077).** G.S. 7A-199 and -293 and 15A-131 address judges’ and magistrates’ jurisdiction and the venue for criminal proceedings in municipalities that are in more than one county and judicial district. This act amends those statutes to specify that when the municipality is in four or more counties, each of which is in a separate judicial district — apparently only High Point meets this definition — charges brought by

city police officers shall be heard in district court in the portion of the city in which a majority of voters reside without the need for consent by the chief district judge in the other district (G.S. 7A-199). Likewise, a magistrate assigned to the city may exercise authority as if all counties were in the same district, without the need for an agreement between clerks and judges (G.S. 7A-293), and charges brought by a municipal police officer for offenses committed within the city may be disposed of in the judicial district for which the city is the seat of superior court even if the area of the city where the offense occurred is in a different district (G.S. 15A-131). This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

- 57. S.L. 2009-410 (H 1078).** Amends G.S. 115C-288(g) (requires school principal to report specified criminal acts to local law enforcement), effective August 5, 2009, to require the principal or the principal's designee to notify the superintendent or designee of any report made to law enforcement. Adds new G.S. 115C-47(56), effective with the 2010-2011 school year, to require local school boards to adopt a policy of notifying a parent or legal guardian of any student alleged to be a victim of a criminal act required to be reported under G.S. 115C-288(g).
- 58. S.L. 2009-411 (S 513).** Adds new G.S. 15A-1344(b1) to require a notice of a hearing in response to a violation of unsupervised probation to be given by personal delivery or by United States mail. Notice must be mailed at least ten days before any hearing and must state the nature of the violation. If a defendant does not appear in response to a mailed notice, the court may (1) terminate the probation and enter appropriate orders to enforce any outstanding monetary obligations as otherwise provided by law; or (2) provide for other notice to the defendant as authorized by Chapter 15A and action authorized by Article 82 of Chapter 15A. Amends G.S. 143B-262.4(f) (community service) to clarify that mailed notice may be addressed to the last known address available to the preparer of the notice and reasonably believed to provide actual notice. Effective December 1, 2009.
- 59. S.L. 2009-412 (S 1078).** Adds new G.S. 15A-534(d2) to provide that when a judicial official is considering pretrial release conditions for a defendant who is charged with a felony and is currently on probation, the official must determine and make a written record of whether the defendant poses a danger to the public. If the official determines that the defendant poses a danger, the official must impose a secured bond under subdivision (a)(4). If there is insufficient information to determine whether the defendant poses a danger to the public, the defendant must be retained in custody under a written order until a determination is made, subject to specified conditions. Amends G.S. 15A-1345 to impose a similar requirement when a probationer is arrested for a violation of a probation condition and has a pending charge for a felony offense. Effective for offenses committed on or after December 1, 2009.
- 60. S.L. 2009-415 (S 713).** Adds new G.S. 14-226.3 to prohibit a person from knowingly and without authority removing, destroying, or circumventing the operation of an electronic monitoring device being used to monitor a person complying with a house arrest program or wearing the device as a condition of bond, pretrial release, probation, parole, or post-release supervision. Specifies various punishments for violations depending on the reason a defendant is required to wear the device. Effective for offenses committed on or after December 1, 2009.
- 61. S.L. 2009-419 (S 514).** Adds new G.S. 7A-146(11) to give the power and duty to a chief district judge to designate certain magistrates to appoint counsel under Article 36 of

- Chapter 7A of the General Statutes, which authorizes appointment of counsel for indigent people. Designation only can be given to magistrates who are licensed attorneys and does not give a magistrate the authority to appoint counsel for potentially capital offenses or to accept a waiver of counsel. The act states that it is effective July 1, 2009, but it was not ratified until July 28, 2009, and was not signed by the Governor until August 5, 2009.
- 62. S.L. 2009-425 (S 1062).** Amends G.S. 50B-3(a) to authorize as relief when issuing a domestic violence protective order: (1) to provide for the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either a party or minor child residing in the household; and (2) to order a party to refrain from cruelly treating or abusing an animal owned, possessed, kept, or held as a pet by either a party or minor child residing in the household. Effective August 5, 2009.
- 63. S.L. 2009-433 (S 107).** Amends various provisions of Chapter 113 of the General Statutes concerning the taking and sale of shellfish. Effective August 7, 2009.
- 64. S.L. 2009-437 (S 929).** Amends G.S. 15A-544.5(d)(8) to specify monetary amount of sanctions to be imposed against surety, effective for motions to set aside filed on or after January 1, 2010. Amends G.S. 15A-544.5(f), effective for bail bonds executed on or after January 1, 2010, to provide that actual notice under the subsection occurs only if two or more failures to appear are indicated on the defendant's release order by a judicial official. Requires a judicial official to indicate on the release order when it is the defendant's second or subsequent failure to appear in the case for which the bond was executed.
- 65. S.L. 2009-438 (S 628).** Amends G.S. 90-113.74 to allow the Department of Health and Human Services to release data in the controlled substances reporting system to the Chief Medical Examiner or a county medical examiner for the purpose of investigating a person's death. Effective August 7, 2009.
- 66. S.L. 2009-452 (S 851) and S.L. 2009-516 (H 1269).** Without clear legal authority to do so, superior court judges have been putting defendants in district court drug treatment court programs, creating puzzling jurisdictional issues when the defendant does not follow the treatment regimen and the district court is faced with revoking the probation. Part of S.L. 2009-516 amends G.S. 7A-271 and -272 and G.S. 15A-1344 to allow district judges to supervise such defendants and revoke probation when agreed upon by the senior resident superior court judge and the chief district judge. The revocation hearing must be in the county where the treatment court is located. The earlier act, S.L. 2009-452, had extended the same provisions to "therapeutic" courts and, in effect, had authorized chief district judges and senior resident superior court judges to establish such programs by written notification to the AOC. The later act, S.L. 2009-516, removed the provisions in which therapeutic courts were treated the same as drug treatment courts, but inadvertently left dangling a new subsection (f) to G.S. 7A-272 providing a definition of therapeutic court that includes the language about establishment by notification to the AOC. Although the statute now is slightly confusing it appears that the authority to have district court supervise superior court probationers applies only to those in drug treatment court programs, not locally established therapeutic courts. Other provisions of S.L. 2009-516 are summarized in the section on Judicial Authority and Administration.
- 67. S.L. 2009-460 (H 1098).** Amends G.S. 14-163.1 (assaulting law enforcement agency animal) to add a search and rescue animal to the statute's provisions. Makes conforming

change to aggravating factor set out in G.S. 15A-1340.16(d)(6a). Effective for offenses committed on or after December 1, 2009.

- 68. S.L. 2009-463 (S 1091).** Amends G.S. 90-95(h)(3b) to delete amphetamine as a controlled substance covered by the subdivision and to make clear that its provisions apply to any mixture containing methamphetamine. Adds new G.S. 90-95(h)(3c) to provide that any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of amphetamine or any mixture containing amphetamine is guilty of a felony as follows: (1) 28 grams or more but less than 200 grams, a Class H felony with a minimum term of 25 months and a maximum term of 30 months in prison and a minimum \$5,000 fine; (2) 200 grams or more but less than 400 grams, a Class G felony with a minimum term of 35 months and a maximum term of 42 months in prison and a minimum \$25,000 fine; and (3) 400 grams or more, a Class E felony and a minimum term of 90 months and a maximum term of 117 months in prison and a minimum \$100,000 fine. Effective for offenses committed on or after September 1, 2009.
- 69. S.L. 2009-464 (S 461).** Adds new Article 101 to Chapter 15A of the General Statutes to provide that no person shall be subject to or given a death sentence or be executed under any judgment that was sought or obtained on the basis of race. A finding that race was the basis of the decision to seek or impose a death sentence may be established if the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the state when the death sentence was sought or imposed. The defendant has the burden of proof that race was a significant factor. New G.S. 15A-2011(b) sets out the evidence relevant to establish a finding, which may include (but is not limited to) statistical evidence and sworn testimony. Provides that a juror's testimony must be consistent with Rule 606(b) of the rules of evidence. New G.S. 15A-2012 sets out the hearing procedure, including that the defendant's claim must be raised at the pretrial conference required by Rule 24 of the General Rules of Practice for the Superior and District Courts or in postconviction proceedings. If a court finds that race was a significant factor, the court shall order that a death sentence not be sought, or that the death sentence imposed by the judgment shall be vacated and the defendant resentenced to life imprisonment without the possibility of parole. Effective August 11, 2009, and applies retroactively. For defendants under a death sentence imposed before August 11, 2009, motions shall be filed within one year of August 11, 2009. For defendants whose death sentence is imposed on or after August 11, 2009, motions must be filed as provided in this session law.
- 70. S.L. 2009-473 (S 252).** Amends various statutes allowing the introduction of laboratory reports and related documents in response to the ruling in *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527 (25 June 2009). This session law is analyzed by School of Government faculty member Jessica Smith, whose online paper is available at <http://www.sog.unc.edu/programs/crimlaw/faculty.htm> (click on "*Melendez-Diaz* & 2009 North Carolina Legislation"). Effective for offenses committed on or after October 1, 2009.
- 71. S.L. 2009-482 (H 1637).** Makes various amendments to Chapter 66 of the General Statutes concerning precious metals purchases by dealers, including record-keeping requirements and criminal history record checks on employees of dealers. Effective October 1, 2009.

72. **S.L. 2009-491 (H 1117).** See the summary of this session law under Motor Vehicle Law, below.
73. **S.L. 2009-498 (H 209).** Amends G.S. 14-208.6(5) to include G.S. 14-202.4(a) (taking indecent liberties with student) within the definition of “sexually violent offense” so that conviction of this offense requires sex offender registration. Effective December 1, 2009, and applies to defendants convicted of a violation of G.S. 14-202.4 on or after that date and to all defendants released from a penal institution on or after that date.
74. **S.L. 2009-500 (H 926).** See the summary of this session law under Motor Vehicle Law, below.
75. **S.L. 2009-501 (H 1002).** Amends G.S. 15A-534.3 (detention for communicable diseases) to clarify that an individual had a nonsexual exposure (current law, was exposed) to the defendant. Effective August 26, 2009.
76. **S.L. 2009-507 (S 563).** Makes various amendments to G.S. 14-410 and 14-413 concerning pyrotechnics and adds new Article 82A to Chapter 58 of the General Statutes concerning training and display operator permits for use of pyrotechnics at concerts or public exhibitions. Effective for offenses committed on or after February 1, 2010.
77. **S.L. 2009-508 (S 990).** Amends G.S. 14-135 (cutting, injuring, or removing another’s timber) to change the Class 1 misdemeanor punishment to the same punishment as provided in G.S. 14-72 (punishment for larceny and possessing and receiving stolen goods). Effective for offenses committed on or after December 1, 2009.
78. **S.L. 2009-510 (S 262).** See the summary of this session law under Judicial Authority & Administration, below.
79. **S.L. 2009-513 (H 473).** Adds new G.S. 14-269.4(4d) to allow a magistrate to possess a concealed handgun in any portion of a building housing a court other than a courtroom itself unless the magistrate is presiding there, if the magistrate (1) is in the building to discharge the magistrate’s official duties; (2) has concealed handgun permit; (3) has successfully completed a one-time weapons retention training substantially similar to that provided to certified law enforcement officers, and (4) secures the weapon in a locked compartment when the weapon is not on the magistrate’s person. Effective August 26, 2009.
80. **S.L. 2009-514 (H 775).** See the summary of this session law under Judicial Authority & Administration, below.
81. **S.L. 2009-516 (H 1269).** See the summary of S.L. 2009-452, above in this section for a partial summary of this law. Other provisions of this law are summarized in Judicial Authority & Administration, below.
82. **S.L. 2009-517 (S 853).** Amends G.S. 15A-1420(a) to provide that if a motion for appropriate relief is being made in superior court by an attorney, the attorney must certify in writing that there is a sound legal basis for the motion and that it is being made in good faith; the attorney has notified both the district attorney’s office and the attorney who initially represented the defendant of the motion; and the attorney must make a specified statement concerning the trial transcript. The motion may not be granted unless the

attorney has complied with this provision. Amends G.S. 15A-1415(f) (making files available) to make the provision apply to non-capital convictions. Effective for all motions for appropriate relief made on or after December 1, 2009.

83. **S.L. 2009-528 (H 889).** Amends G.S. 20-141.4(b) to increase the punishment for misdemeanor death by vehicle from a Class 1 to a Class A1 misdemeanor. Effective for offenses committed on or after December 1, 2009.
84. **S.L. 2009-538 (S 138).** Adds new G.S. 14-401.23 to prohibit a person from knowingly or intentionally manufacturing, selling, delivering, or possessing with the intent to sell or deliver *Salvia divinorum* or *Salvinorin A*. A violation for a first or second offense is an infraction punishable by a minimum \$25 penalty. Effective for violations committed on or after December 1, 2009
85. **S.L. 2009-544 (S 464).** Adds new G.S. 15A-401(g) to provide that when a law enforcement officer arrests an adult who is supervising minor children who are present at the time of arrest, the minor children must be placed with a responsible adult approved by a parent or guardian of the minor children. If it is not possible to place the minor children, the law enforcement officer must contact the county department of social services. Adds new G.S. 114-10.01 (collection of law enforcement statistics involving race, ethnicity, and sex of drivers stopped for traffic enforcement) to provide that an agency must submit collected information to the Division of Criminal Statistics within 60 days of the close of each month. Any agency that does not submit the information as required shall be ineligible to receive any law enforcement grants available by or through the state until the information which is reasonably available is submitted. Effective January 1, 2010.
86. **S.L. 2009-545 (S 984).** See the summary of this session law under Juvenile Law, below.
87. **S.L. 2009-546 (S 978).** Adds new G.S. 14-415.26(b1) to require the North Carolina Criminal Justice Education and Training Standards Commission to coordinate with state and local law enforcement officers and with the community college system to provide multiple firearms qualification sites throughout the state where a qualified law enforcement officer may satisfy the firearms qualification criteria required for certification for a concealed handgun permit. Effective when the bill becomes law.
88. **S.L. 2009-547 (S 726).** Adds new G.S. 15A-534(a)(5) to add house arrest with electronic monitoring as a condition of pretrial release and provides that if this condition is imposed, the defendant must execute a secured bond under subdivision (a)(4). Adds new G.S. 15A-531(5a) to define house arrest with electronic monitoring. Amends G.S. 15A-1340.11(4a) (definition of house arrest with electronic monitoring) and 15A-1343(b1)(3c) (remain at residence as special probation condition) to provide that a court may authorize the probationer to leave the probationer's residence for employment, counseling, a course of study, vocational training, or other specific purposes and may modify that authorization. The probation officer may authorize the probationer to leave the residence for specific purposes not authorized by the court with the approval of the probation officer's supervisor. Amends G.S. 7B-1501(12) to include in the definition of house arrest that the court or juvenile counselor may authorize the juvenile to leave for school, counseling, work, or other similar purposes if the juvenile is accompanied in transit by a parent, legal guardian, or other person approved by the counselor. Effective for offenses committed on or after December 1, 2009.

- 89. S.L. 2009-551 (H 1261).** Adds new G.S. 14-458.1 to create an offense entitled “cyber-bullying” to prohibit a person from using a computer or computer network to commit specified acts with the intent to intimidate or torment a minor or a minor’s parent. Sets out other violations involving the use of a computer or computer network. A violation is a Class 1 misdemeanor if the defendant is 18 or older and a Class 2 misdemeanor if the defendant is under 18 when the offense is committed. Effective for offenses committed on or after December 1, 2009.
- 90. S.L. 2009-555 (S 489).** Amends G.S. 15A-1340.14(c) and 15A-1340.17(c) to change number of points for each Prior Record Level as follows: Level I, from 0 points to not more than 1 point; Level II, from at least 1 point, but not more than 4 points, to at least 2 points, but not more than 5 points; Level III, from at least 5 points, but not more than 8 points, to at least 6 points, but not more than 9 points; Level IV, from at least 9 points, but not more than 14 points, to at least 10 points, but not more than 13 points; Level V, from at least 15 points, but not more than 18 points, to at least 14 points, but not more than 17 points; and Level VI, from at least 19 points to at least 18 points. Effective for offenses committed on or after December 1, 2009.
- 91. S.L. 2009-556 (S 488).** Amends G.S. 15A-1340.17(c) to change various sentence lengths for Class B1 through Class G felonies. Effective for offenses committed on or after December 1, 2009.
- 92. S.L. 2009-560 (S 167).** Amends G.S. 14-258.1 to make it a Class 1 misdemeanor to provide tobacco products or cell phones to inmates in the custody of the Department of Correction or a local confinement facility, and for inmates of a local confinement facility to possess tobacco products or cell phones. Effective for offenses committed on or after March 1, 2010.
- 93. S.L. 2009-577 (H 1329).** See the summary of this session law under Judicial Authority & Administration, below.

Juvenile Law

- 1. S.L. 2009-38 (H 1272).** G.S. 7B-101(1)d. defines “abused juvenile” to include any juvenile whose parent, guardian, custodian, or caretaker commits, permits, or encourages the commission of a violation of specified criminal laws by, with, or upon the juvenile. This law amends that definition to specify the additional offenses of rape of a child by an adult offender, as provided in G.S. 14-27.2A, and sexual offense with a child by an adult offender, as provided in G.S. 14-27.4A.

With respect to termination of parental rights proceedings, the act (1) rewrites G.S. 7B-1104 to reiterate that the juvenile is a party to the action; (2) rewrites G.S. 7B-1106, relating to actions initiated by petition, to delete the requirement that the juvenile be named as a respondent and served with a summons, and to add a requirement that the juvenile’s guardian ad litem or attorney advocate be served pursuant to G.S. 1A-1, Rule 5, if the juvenile has a guardian ad litem; and (3) rewrites G.S. 7B-1106.1, relating to actions initiated by motion, to delete the requirement that a juvenile who is 12 or older be served with notice, and to allow service on the juvenile’s guardian ad litem to be on either that individual or the attorney advocate.

Effective May 27, 2009.

2. **S.L. 2009-185 (H 1106)**. Effective June 26, 2009, rewrites G.S. 48-1-109, regarding agencies that may prepare assessments for and reports to the court, to address circumstances in which the adoptive parent lives in or moves to another state. An order for a report to the court, for example, may be sent to a person or entity authorized to prepare home assessments for the purpose of adoption under laws of the petitioner's state of residence. (Since the N.C. order would not be binding on a person or entity in another state, it seems likely that procedures under the Interstate Compact on the Placement of Children, or similar procedures, would be used in seeking the required report or information.)

The act amends both G.S. 48-2-205 and G.S. 48-2-401 to require that any readoption of a child who was adopted by a husband and wife in a foreign country must be done jointly by the man and woman who adopted the child, even if they divorced between the time of the adoption and the readoption. A parent who does not join in a readoption petition filed by the other parent must be joined as a necessary party pursuant to G.S. 1A-1, Rule 19.

The adoption law, G.S. Chapter 48, includes specific notice requirements for adoption proceedings but no mention of a summons. The act adds new G.S. 48-2-401(g), which states that issuance of a summons is not required in order to commence an adoption proceeding.

G.S. 48-2-501(d) provides an exception to the requirement for a report to the court in certain stepparent adoptions. The act rewrites the subsection to provide a similar exception for grandparents. In the adoption of a child by a grandparent with whom the child has lived for at least two consecutive years immediately before the filing of the adoption petition, the court may order a report, but is required to do so only if the child's consent is being waived; the child has revoked a consent; or the child is eligible for adoption assistance pursuant to G.S. 108A-49.

The act rewrites G.S. 48-3-608(a) and 48-3-706(a), relating to revocation of a consent or relinquishment, to address circumstances in which the final day of the revocation period falls on a Saturday, Sunday, or legal holiday when North Carolina courthouses are closed. (Previously these subsections referred to "a weekend or a North Carolina or federal holiday.")

3. **S.L. 2009-311 (H 1445)**. Effective October 1, 2009, the act makes substantial changes to the Juvenile Code, primarily in relation to abuse, neglect, dependency, and termination of parental rights proceedings.

Confidentiality.

G.S. 7B-302 requires county social services departments to hold in strictest confidence all information they receive in connection with the receipt and assessment of reports of child abuse, neglect, or dependency. S.L. 2009-311 rewrites the exceptions to that requirement to specifically authorize examination of the information by the juvenile, including a juvenile who is 18 or older or emancipated, or the juvenile's guardian ad litem.

The act gives a social services department the right to reasonable notice and an opportunity to be heard before a judge in a civil action, to which the department is not a party, orders the release of confidential social services information. In addition, it requires that the court determine that the information is relevant, necessary to the trial, and unavailable from any other source before ordering its release. (The act makes clear that these provisions do not affect any requirements relating to medical, mental health, or HIV information.) The act gives social services departments explicit authority to surrender records to the court for in camera review when that is necessary for the court to make the required determinations. In a criminal or delinquency case, a judge must

conduct an in camera review before releasing to the defendant or juvenile any confidential social services records. S.L. 2009-311 also rewrites G.S. 7B-2901(b) to make the same changes with respect to records a social services department is required to maintain for children placed by the court in the department's custody.

Discovery and information sharing.

S.L. 2009-311 completely rewrites G.S. 7B-700 to address both discovery and the sharing of information in juvenile cases. It authorizes a county department of social services to share with any other party information that is relevant to a pending action under Subchapter I of the Juvenile Code (*i.e.*, actions involving abuse, neglect, dependency, termination of parental rights, and, presumably, actions resulting from interference petitions and petitions seeking expunction from the Responsible Individuals List), except (1) the identity of a reporter of abuse, neglect, or dependency; (2) information that would lead to discovery of the reporter's identify; or (3) the identity of any other person, if the department determines that the disclosure would be likely to endanger the person's life or safety.

The rewritten section also authorizes chief district court judges to adopt local rules or enter administrative orders addressing information sharing among parties and the use of discovery.

Any party may file a motion for discovery, describing the information sought and stating that the party has not been able to obtain the information through the provisions for information sharing established by statute or by local rule or administrative order. A party served with a discovery motion may request that discovery be denied, restricted, or deferred, and must submit for in camera inspection any document, information or materials the party seeks to protect. If the court grants a motion to deny, restrict, or defer discovery, any materials submitted for in camera review must be preserved for appellate review.

The fact that the act requires disclosure does not authorize redisclosure that is prohibited by state or federal law. Unless local rules provide otherwise, information obtained by the child's guardian ad litem pursuant to G.S. 7B-601 is not subject to disclosure pursuant to these provisions; however, all reports and records submitted to the court first must be shared with all parties.

Venue and inter-county coordination.

S.L. 2009-311 addresses, in some detail, issues relating to changes of venue and coordination between counties when more than one county is involved with a case. An amendment to G.S. 7B-302 requires a county social services director, after receiving a report of abuse, neglect, or dependency and determining that the juvenile's legal residence is in another county, to promptly notify the director in the county of the juvenile's residence. The two directors must coordinate efforts to ensure that appropriate actions are taken.

G.S. 7B-400 is amended to delete the provisions for transferring a case that is filed in a district other than that of the juvenile's residence. Implicit in this and other changes is a requirement that adjudication occur in the district in which the petition is filed and that the department that files a petition be responsible for proving the allegations in the petition. An amendment to G.S. 7B-402 requires a department that files a petition in a county other than that of the juvenile's residence to provide a copy of the petition and any notices of hearing to the director in the county of the juvenile's residence.

A new section, G.S. 7B-900.1, addresses changes of venue and transfers of custody after adjudication. It allows the court, any time after adjudication, to transfer venue to another county, but only after considering eight factors set out in the statute, making required findings of fact, and contacting a judge in the district to which the case is being transferred if the transfer is to a different district. The eight factors are: (1) the current

residences of the child and the parent, guardian, or custodian, and the extent to which those residences have been and are likely to be stable; (2) the reunification or other permanent plan, and the likely effect of a change of venue on efforts to achieve permanence; (3) the nature and location of services and service providers necessary to achieve the plan; (4) the impact on the child of the potential disruption of an existing therapeutic relationship; (5) the nature and location of witnesses and evidence likely to be required in future hearings; (6) the degree to which transfer would cause inconvenience to one or more parties; (7) any agreement of the parties as to which forum is most convenient; and (8) the familiarity of the social services departments, the courts, and the local guardian ad litem offices with the juvenile and the juvenile's family.

After considering these and any other relevant factors, the court may transfer the case to another county only after finding that (1) the present forum is inconvenient; (2) transfer is in the juvenile's best interest; (3) the parties' rights will not be prejudiced by the change in venue; and (4) the social services directors in the two counties have communicated about the case and either (i) the directors agree with respect to each county's responsibility for providing financial support and services in the case, or (ii) the director of the state Division of Social Services or his or her designee has made that determination pursuant to G.S. 153A-257(d).

Any time the court transfers a case to a different county, the court is required to join or substitute as a party the social services director in the county to which the case is being transferred and, if the juvenile is in the custody of social services in the county where the action is pending, transfer custody to the department in the county to which the case is being transferred. Such orders may be entered, however, only if the director in the transferee county has been given notice and an opportunity to be heard or has waived the right to notice and a hearing.

Before transferring a case to another district, the court is required to communicate with the chief district court judge or a judge presiding in juvenile court in that district and explain the reasons for the proposed transfer. If that judge makes a timely objection to the transfer, either verbally or in writing, the court may order the transfer only after making detailed findings of fact that support a conclusion that the juvenile's best interests require that the case be transferred.

An order transferring a case must be entered within thirty days after the hearing. The clerk is required to transmit to the court in the other county a copy of the complete record of the case within three business days after entry of the transfer order. The clerk receiving the transferred case is required to promptly assign a file number, ensure that any necessary appointments of new attorneys or guardians ad litem are made, and calendar and give notice of the next court action required in the case.

Review, permanency planning, and post-termination of parental rights hearings.

S.L. 2009-311 amends G.S. 7B-906(a), 7B-907(a), and 7B-908(b) with respect to review, permanency planning, and post termination of parental rights hearings, to require the county social services department to either (1) provide the clerk the name and address of the foster parent, relative, or preadoptive parent providing care for the child, for purposes of notice of the hearing; or (2) file written documentation with the clerk that the child's current care provider was sent notice of the hearing.

With respect to post-termination of parental rights hearings, if the juvenile is the subject of an adoption decree before the date of a scheduled review, within ten days of receiving notice that the adoption is final, the social services department must file with the court and serve on any guardian ad litem for the juvenile written notice of the entry of the adoption decree. The decree itself may not be filed in the juvenile court file.

The act also rewrites G.S. 7B-908(f) to require a social services department, within ten days of receiving a copy of the adoption petition, to file with the court and serve on

any guardian ad litem for the juvenile written notice that the petition has been filed, but no copy of the adoption petition may be filed in the juvenile file. The guardian ad litem then has ten days from service of the notice to file in the adoption proceeding a motion alleging any abuse of discretion by the social services department or other agency in the adoption selection process. After such a motion, the case must be transferred to district court. The guardian ad litem is required to serve the department of social services with notice of the motion, but the motion may not be filed in the juvenile file.

Termination of parental rights.

S.L. 2009-311 rewrites G.S. 7B-1101.1(a) to provide that when a petition to terminate parental rights is filed, the clerk must appoint provisional counsel for each respondent parent unless the parent is already represented. At the first hearing after service on the parent, the court is required to dismiss provisional counsel if the parent (1) does not appear at the hearing, (2) does not qualify for appointed counsel, (3) has retained counsel, or (4) waives the right to counsel. Otherwise the court confirms the appointment.

The act also amends G.S. 7B-1106(b) to require that the summons in a termination of parental rights proceeding include notice that if the parent is represented by counsel appointed previously in an abuse, neglect, or dependency case, that attorney will continue to represent the parent unless the court orders otherwise. Other changes to the summons conform to the provisional counsel and pretrial hearings requirements (described below).

The act deletes the “special hearing” requirement in G.S. 7B-1108(b) and adds a new section, G.S. 7B-1108.1, requiring the court to conduct a pretrial hearing in every termination case, but allowing the court to combine the pretrial and adjudicatory hearings. At a pretrial hearing, the court is required to consider retention or release of provisional counsel; whether a guardian ad litem should be appointed for the child if not previously appointed; whether summons, service of process, and notice requirements have been met; any pretrial motions; any issues raised by any responsive pleading; and any other issue properly addressed as a preliminary matter.

Delinquent and undisciplined juveniles in social services custody.

S.L. 2009-311 adds a new section, G.S. 7B-1700.1, repeating the duty to make a report to a county department of social services when a person has cause to suspect that a juvenile is abused, neglected, or dependent, as stated in G.S. 7B-301, with specific reference to juvenile court counselors having that duty. It rewrites G.S. 7B-1904 to require an official executing an order for nonsecure custody of a juvenile alleged to be delinquent or undisciplined to give a copy of the petition and order to the person or agency with whom the juvenile is being placed. The act rewrites G.S. 7B-2503(1)c. and 7B-2506(1)c. to permit the court at disposition to place an undisciplined or delinquent juvenile in the custody of a county department of social services only if the social services director has received notice and an opportunity to be heard.

4. **S.L. 2009-320 (H 1347).** Effective July 17, 2009, the act amends G.S. 143B-535 to authorize chief juvenile court counselors to delegate to a court counselor or supervisor authority to carry out specified responsibilities to facilitate effective operation of the district; and designate a court counselor as acting chief to act during the absence or disability of the chief.
5. **S.L. 2009-356 (H 192).** See the summary of this session law under Criminal Law & Procedure, above.
6. **S.L. 2009-372 (S 920).** See the summary of this session law under Criminal Law & Procedure, above.

7. **S.L. 2009-545 (S 984).** This act, effective December 1, 2009, makes changes regarding access to delinquency records. It rewrites the definition of “prosecutor” in G.S. 7B-1501(23) to include the district attorney or “an assistant district attorney.” By deleting the reference to “the assistant district attorney assigned to juvenile proceedings,” the act makes clear that under G.S. 7B-3000(b), any prosecutor may examine and obtain copies of the written parts of a juvenile’s delinquency record. It also allows prosecutors to share information from a juvenile’s record with magistrates, but not to allow a magistrate to photocopy any part of the record – the same provision that already exists with respect to law enforcement officers. The information must remain confidential and may not be placed in any public record.

When someone is charged as an adult with an A1 misdemeanor or a felony committed on or after December 1, 2009, and before the defendant reached the age of 21, G.S. 7B-3000(e), as rewritten, allows law enforcement, the magistrate, the courts, and the prosecutor to use some information from the defendant’s juvenile record for pretrial release, plea negotiating decisions, and plea acceptance decisions. These uses may be made only of an adjudication that was for an A1 misdemeanor or a felony, and only if the adjudication occurred within 18 months before the defendant reached age 16 or any time after the juvenile reached age 16. To facilitate implementation of these provisions, the act rewrites G.S. 7B-2411 to require that every written adjudication order in a delinquency case include the date of the adjudicated offense, the misdemeanor or felony classification of the offense, and the date of adjudication.

8. **S.L. 2009-547 (S 726).** See the summary of this session law under Criminal Law & Procedure, above.

Motor Vehicle Law

1. **S.L. 2009-7 (S 37).** Enacts new G.S. 20-116(n), permitting certain vehicle combinations used in connection with motorsports competition events to exceed otherwise applicable maximum length restrictions. Such vehicles that include a cab or other motorized vehicle unit with living quarters and an attached enclosed specialty trailer which, when combined, do not exceed 90 feet in length, may be operated on the highways for certain enumerated motorsports purposes. Effective March 19, 2009.
2. **S.L. 2009-81 (H 201).** Amends G.S. 20-73 to except section’s titling requirements when a state agency assists the U.S. Department of Defense in purchasing or transferring a vehicle to a local government unit, a volunteer fire department, or a volunteer rescue squad. Adds new G.S. 143B-508 to establish Law Enforcement Support Services Division within Department of Crime Control and Public Safety. Effective June 11, 2009.
3. **S.L. 2009-99 (H 1198).** Clarifies the effective date and applicability of 2007 amendments lengthening the period before which certain people whose licenses are permanently revoked become eligible for a conditional restoration their license. S.L. 2007-493 amended G.S. 20-19(i) to extend from three to five years the period before which a person whose license is permanently revoked for impaired driving and a fatality became eligible for a conditional license restoration. S.L. 2009-99 clarifies that the longer waiting period applies to persons whose waiting period for a hearing on conditional restoration began on or after the effective date of S.L. 2007-493, which was August 30, 2007.
4. **S.L. 2009-104 (H 825).** Amends G.S. 20-161(a) to allow garbage trucks to stop on a highway outside municipal limits while collecting garbage or recyclable material.

Effective for offenses committed on or after October 1, 2009.

5. **S.L. 2009-127 (H 838).** Amends G.S. 20-116(d) and 20-118(k) to create an exemption for size and weight restrictions of haulers of sage. Effective June 19, 2009.
6. **S.L. 2009-128 (S 1000).** Amends G.S. 20-116 to restrict the overall length of a single vehicle with two or more axles to forty feet, to require that vehicles transporting equipment or poles for emergency utility repair at night have trailers that are no longer than fifty-three feet, to increase the maximum length for a combination of a house trailer used as a mobile home with its towing vehicle, and to require certain farm vehicles to be self-propelled when operating on a highway. Effective for offenses committed on or after December 1, 2009.
7. **S.L. 2009-129 (S 1000).** Amends G.S. 20-116(d) to restrict the overall length of a single vehicle with two or more axles (was two or three axles) to 40 feet. Amends G.S. 20-116(e) to restrict to 53 feet maximum length of trailers used by vehicles operated at nighttime by a public utility to transport structural objects required for emergency repair of public service facilities or properties. Increases from 55 feet (exclusive of bumpers) to 60 feet (inclusive of bumpers) the maximum length for a combination of a house trailer used as a mobile home with its towing vehicle. Amends the exception for farm equipment in G.S. 20-116(j) to require that such equipment be self-propelled. Effective December 1, 2009, and applicable to offenses committed on or after that date.
8. **S.L. 2009-135 (H 9).** Enacts new G.S. 20-137.4A making it unlawful to operate a vehicle on a public street, highway, or public vehicular area while using a mobile telephone to manually enter multiple letters or text in the device as a means of communicating with another person or to read any electronic mail or text message transmitted to the device or stored within device other than a name or number stored in the device or caller identification information. Excepts from these provisions the operator of a vehicle that is lawfully parked or stopped, along with law enforcement officers, fire department members, and the operators of ambulances while in the performance of their official duties. Also excepts use of voice-operated technology and global positioning systems (GPS) and wireless communications devices used to transmit or receive data as part of a digital dispatch system. Provides that a violation of this section while operating a school bus is a Class 2 misdemeanor, punishable by a fine of not less than \$100. Any other violation is an infraction punishable by a fine of \$100 and costs of court. Provides that no driver's license points or insurance surcharge may be assessed for a violation and that a violation does not constitute negligence per se or contributory negligence per se by the operator in an action for the recovery of damages arising out of the operation, ownership, or maintenance of a vehicle. Amends the definition of "[a]dditional technology" in G.S. 20-137.3(a)(1) — the statute prohibiting persons who are under 18 from using a mobile telephone or any additional technology while operating a motor vehicle on a street, highway, or public vehicular area — to provide that the term does not include "electronic mail or text messaging." Orders the Joint Legislative Transportation Oversight Committee to identify and study the leading causes of driver inattention or distraction, risks posed by driver inattention or distraction, and methods to manage driver distractions and promote highway safety. Directs the committee to report findings and recommendations, including any proposed legislation, to the General Assembly by April 15, 2010. Effective December 1, 2009, and applicable to offenses committed on or after that date.

9. **S.L. 2009-147 (H 440).** Amends G.S. 20-217(g) to provide that any person who willfully passes or attempts to pass a stopped school bus and strikes a person, resulting in the death of that person, is guilty of a Class H felony. Enacts new G.S. 20-217(h), which provides that automated camera and video recording systems may be used to detect and prosecute violations of G.S. 20-217. Provides for the admission into evidence of photographs and video recorded by such a system in any proceeding alleging the improper passing of a school bus in violation of G.S. 20-217(a). Effective December 1, 2009, for offenses committed on or after that date.
10. **S.L. 2009-234 (S 649).** Amends G.S. 20-141(f) to provide that when a municipality annexes a road on the State highway system, the speed limit posted on the road at the time it was annexed remains in effect until the Department of Transportation and the municipality pass concurrent ordinances to change the speed limit. Effective upon enactment. Amends G.S. 20-141(j2) to permit segments of highway work zones (rather than entire zones) to be designated as zones in which a \$250 penalty applies for speeding. Requires a law enforcement officer issuing a citation for a violation of this section to also determine whether the driver violated G.S. 20-141(j1) by driving more than 15 miles per hour more than the speed limit or more than 80 miles per hour. Effective December 1, 2009, for offenses committed on or after that date.
11. **S.L. 2009-274 (H 98).** Enacts new G.S. 20-7(f)(3b) to permit the Division of Motor Vehicles to renew at any time the driver's license of a member of the U.S. Armed Forces or a member of a reserve component of the U.S. Armed Forces who applies for renewal and provides orders that place the member on active duty and duty station outside North Carolina. Provides that a person who is a member of the U.S. Armed Forces reserves is considered to have a valid license until 60 days after the date of release from active duty unless the license was rescinded, revoked, or otherwise invalidated under some other law, but that no license is considered valid more than 18 months after its expiration date. Amends subsection (f)(4)(a) to allow members of the U.S. Armed Forces reserves who are serving on active duty and stationed outside the state to renew their driver's licenses by mail.
12. **S.L. 2009-319 (H 882).** Enacts new G.S. 20-183.8(b1), making it a Class 3 misdemeanor to perform a safety or emissions inspection without a license. Effective December 1, 2009 for offenses committed on or after that date.
13. **S.L. 2009-369 (H 1185).** Amends G.S. 20-19 to allow a person convicted of habitual impaired driving pursuant to G.S. 20-138.5 (which results in a permanent driver's license revocation) to petition the Division of Motor Vehicles (DMV) for a hearing to restore driving privileges after he or she has been revoked for 10 years. The person must show that he or she has not been convicted in the previous 10 years of any motor vehicle or criminal offense and is not currently a user of alcohol, unlawfully using any controlled substance, or an excessive user of prescription drugs. Any license restored by DMV pursuant to these provisions must require ignition interlock and prohibit the person from driving with an alcohol concentration of greater than 0.00. The permanent revocation period must be reinstated upon a violation of the alcohol concentration restriction or a willful refusal to submit to a chemical analysis. Effective December 1, 2009, and applicable to applications for reinstatement occurring on or after that date. Act expires December 1, 2014.

14. **S.L. 2009-376 (S 368).** Enacts various changes to Chapter 20 requested by the Department of Crime Control and Public Safety (DCCPS). Effective October 1, 2009, and applicable to civil penalties and offenses committed on or after that date.

New G.S. 20-178.1 requires a person assessed a civil penalty for a violation of Article 3 of Chapter 20 (The Motor Vehicle Act of 1937) by the DCCPS to pay the penalty within 30 calendar days after the date it was assessed or to make a written request within this time for departmental review. Permits a person dissatisfied with department's decision who has paid penalty in full within 30 days of decision to, within 60 days of decision, bring an action for refund of the penalty against the department in Wake County Superior Court or in the superior court of the county in which the penalty was assessed. Requires the superior court to conduct a hearing, review the departmental decision, review findings of fact, and make conclusions of law. Permits the court to award attorneys' fees to a prevailing plaintiff only upon a showing of bad faith on the part of the department, and requires that any order for attorneys' fees be supported by findings of fact and conclusions of law. Provides for accrual of interest on penalties at the rate set forth in G.S. 105-241.2. Requires that clear proceeds of civil penalties assessed by the department pursuant to Article 3 of Chapter 20, minus interest, filing fees, attorneys' fees, or other necessary costs of court be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Amends G.S. 20-382.2, which sets forth penalties for failure to comply with registration or insurance verification requirements to incorporate appeal provisions in new G.S. 20-178.1.

Amends G.S. 20-117(a) increasing the size of the flag required for oversize loads from 12 to 18 inches in length and width. New subsection (b) requires a commercial motor vehicle or motor vehicle with a gross vehicle rating of at least 10,001 pounds to comply with federal regulations governing parts and accessories necessary for safe operation when towing a load or carrying a load that protrudes from the rear or sides of the vehicle.

Amends G.S. 20-122.1 to remove the exemption to tire tread depth requirements that previously applied to certain trucks owned by farmers and used to transport farm products. Enacts new subsection (a1) requiring any motor vehicle with a gross vehicle weight rating of at least 10,001 pounds that is operated on the highways to be equipped with tires that meet safety standards set forth in statute.

Amends G.S. 20-381(a)(2a) to require agents of the DCCPS to declare motor vehicles "Out of Service" upon determining that the mechanical condition or loading of a vehicle that is in actual use on the highways renders it likely to cause a crash or breakdown. Prohibits operation of "Out of Service" vehicles until required repairs have been completed and bars motor carrier operators from requiring or permitting such operation.

Amends G.S. 20-124(e1) and (g) to require brakes as standard equipment for semitrailers being pulled by motor trucks and truck-tractors. Removes the exemption from the brakes requirement for farm trailers equipped with brakes from the manufacturer and manufactured after October 1, 2009.

Amends G.S. 20-135.2A(c)(8) to require seat belt use by drivers of garbage and recycling trucks and to require seat belt use by passengers in such trucks while traveling to and from garbage and recycling material loading and unloading locations.

Amends G.S. 20-136.1 to prohibit the viewing of any television, computer, or video player while driving. Formerly, the provision banned only the viewing of television while driving. Ban applies to devices located in the motor vehicle at any point forward of the back of the driver's seat that also are visible to the driver. Exemptions apply for certain devices, including global positioning systems and navigation devices. Provisions do not

apply to law enforcement or emergency personnel while performing their official duties or to the operator of a vehicle that is lawfully parked or stopped.

- 15. S.L. 2009-416 (S 931).** Makes various changes affecting commercial driver's license laws. Amends G.S. 20-4.01(4a)b to include within the definition of an out-of-state conviction a prayer for judgment continued, including any payment of a fine or court costs, if the offender holds a commercial driver's license or if the offense occurs in a commercial motor vehicle. Effective for offenses committed on or after March 31, 2010.
- 16. S.L. 2009-440 (S 660).** Enacts new G.S. 20-279.21(d1) requiring motor vehicle liability policies to provide an alternative method of determining the amount of property damage to a motor vehicle when liability for coverage is not in dispute. Requires that when a claimant and insurer disagree as to diminution in value of a vehicle due to an accident and the difference is more than \$2,000 or 25 percent of the value of the vehicle before the accident, whichever is less, that on the written demand of the claimant or the insurer, each must select an appraiser to appraise the loss. If the appraisers do not agree, they must select another appraiser to serve as an umpire. If the appraisers cannot agree on an umpire, the claimant or insurer may request that a magistrate resident in the country where the insured motor vehicle is registered or the county where the accident occurred select the umpire. The appraisers then shall submit their differences to the umpire, who must prepare a report determining the amount of the loss. Enacts new G.S. 7A-292(15) granting magistrates the power to appoint an umpire to determine motor vehicle liability policy diminution in value. Effective October 1, 2009, and applicable to motor vehicle liability insurance policies issued or renewed on or after that date.
- 17. S.L. 2009-451 (S 202).** The budget bill, summarized in Judicial Authority & Administration, below, amends costs and fees for numerous criminal motor vehicle law violations. Also relevant to motor vehicle offenses are the amendments to G.S. 20-7(i1), making permanent the \$75 license restoration fees applicable to people whose licenses are revoked for impaired driving. Formerly, the \$75 fee was to revert to \$50 when the cumulative total of fees deposited under this subsection in the General fund exceeded \$10 million.
- 18. S.L. 2009-456 (H 67).** Amends G.S. 20-63(g) to provide that any operator of a motor vehicle who covers the state name, year sticker, or month sticker on a registration plate with a license plate frame commits an infraction and must be fined under G.S. 14-3.1. Amends language permitting transparent license plate covers to allow their use if they "do not prevent or interfere" (was, "are not designed or intended to prevent or interfere") with the taking of photographs of a registration plate by a traffic control or toll collection system. Effective December 1, 2009, for offense committed on or after that date. Provides that from December 1, 2009, to November 30, 2010, an operator of a motor vehicle who violates the act must be given a warning violation only.
- 19. S.L. 2009-491 (H 1117).** Amends commercial driver's license laws to prohibit DMV from issuing or renewing a commercial driver's license with endorsements that qualify a person to drive a commercial passenger vehicle or school bus (endorsements P and S, respectively) for anyone required to register under the sex offender and public protection registration programs codified in Article 27A of Chapter 14. New G.S. 20-17.4(n) provides that a person convicted of a violation that requires registration under Article 27A is disqualified from driving a commercial motor vehicle that requires a commercial driver's license with a P or S endorsement for the period of time that the person is

required to maintain registration. Provides that a person registered as of December 1, 2009, who has a valid commercial drivers license with a P or S endorsement that was issued on or before December 1, 2009, is not disqualified until that license expires, as long as the person does not commit a subsequent offense that requires registration.

New G.S. 20-17.9 requires DMV to revoke a commercial license with a P or S endorsement issued to a person convicted of an offense on or after December 1, 2009, that requires registration. New G.S. 20-27.1 makes it a Class F felony for a person to drive a commercial passenger vehicle or a school bus if the person does not have a valid commercial driver's license with a P or S endorsement because of a conviction that requires registration.

New G.S. 20-37.14A requires DMV to search the statewide registry and the National Sex Offender Public Registry to determine if a license applicant is currently registered as a sex offender before issuing a commercial driver's license with a P or S endorsement. Provides that if DMV is unable to access the registries, an otherwise qualified applicant may sign an affidavit stating that he or she does not appear on the registries. Requires DMV to search the registries once access is restored. Makes it a Class I felony to knowingly swear or affirm falsely to any matter or thing required by the terms of G.S. 20-37.14A to be affirmed to or sworn.

Permits a person denied such a license or disqualified from driving a commercial vehicle that requires such a license based on DMV's determination that the applicant is registered as a sex offender to petition for a hearing in superior court in the county where the respondent resides. Alternatively permits a petition to be filed with "the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district." Requires a judge or court to set the matter for hearing upon 30 days' written notice to DMV.

Effective December 1, 2009, for offenses committed on or after that date. Applies to persons whose initial registration under Article 27A occurs on or after December 1, 2009, and to persons who are registered under Art. 27A before December 1, 2009, and who continued to be registered on or after December 1, 2009.

- 20. S.L. 2009-492 (S 64).** Amends G.S. 20-7(a1) to require a person driving a motorcycle to have a (1) full provisional license with a motorcycle learner's permit; (2) regular driver's license with a motorcycle learner's permit; (3) full provisional license with a motorcycle endorsement; or (4) regular driver's license with a motorcycle endorsement. Amendments require a person less than 18 years of age to complete an approved motorcycle safety education course to obtain a motorcycle endorsement or motorcycle learner's permit, in addition to meeting other requirements. Amendments prohibit a person less than 18 years of age from driving a motorcycle with a passenger. Provides that motorcycle learner's permits expire 12 months (was, 18) after issuance and may be renewed for one additional six-month period. Effective January 1, 2011, for permits and endorsements issued on or after that date. Requires the Commissioner of Motor Vehicles to determine the availability of spaces for students in approved motorcycle education courses to determine if there is adequate space to meet the expected demand and if the projected average wait time of an applicant to obtain space in a course will exceed four weeks. Requires the Commissioner to report the results to the Joint Legislative Commission on Government Operations on or before March 1, 2010. Also requires the UNC Highway Safety Research Center to study whether persons 18 to 21 years old should be required to successfully complete a motorcycle safety course before being issued a motorcycle learner's permit or motorcycle endorsement. Requires a report on study results to the Joint Legislative Transportation Oversight Committee on or before March 1, 2010.

21. **S.L. 2009-493 (S 203).** Amends G.S. 20-37.6(c) to require that DMV issue a “placard registration card” with each removable windshield placard issued to a handicapped person. Requires that the registration card bear the person’s name and address, the placard number, and an expiration date. Requires that the registration card be in the vehicle in which the handicapped placard is being used. Further requires that the person to whom the placard is issued be the operator or a passenger in the vehicle in which the placard is displayed. Effective January 1, 2010, for placards issued or renewed after that date.
22. **S.L. 2009-494 (S 423).** Amends G.S. 20-37.13 to allow the Division of Motor Vehicles to waive the commercial motor vehicles skills test for a member of the armed forces under specified circumstances. Effective for commercial driver’s licenses issued on or after January 1, 2010.
23. **S.L. 2009-495 (S 631).** Enacts new G.S. 20-49.3 to permit the DMV, Bureau of License and Theft, to retain any vehicle seized by it in the course of any investigation authorized by G.S. 20-49 or 20-49.1 and forfeited to it by a court of competent jurisdiction. Allows DMV to accept custody and ownership of any vehicle seized by the federal government, forfeited by a court of competent jurisdiction, and turned over to DMV. Requires that all such vehicles be used by the Bureau of License and Theft to conduct undercover operations and inspection station compliance checks throughout the state. Sets forth provisions governing disposition of seized vehicles of no further use to DMV.
24. **S.L. 2009-500 (H 926).** Amends G.S. 20-19(d)(2) to permit a person seeking to have his or her license restored to prove that he or she has abstained from alcohol consumption by voluntarily submitting to continuous alcohol monitoring for at least 120 days. Requires that the continuous alcohol monitoring system be approved under G.S. 15A-1343.3 and permits the DMV to establish guidelines for accepting evidence of abstinence from alcohol consumption. Effective for hearings or proceedings occurring on or after December 1, 2009. Authorizes DMV to expend up to \$10,000 of funds appropriated during the 2009-10 fiscal year to develop and promulgate implementing guidelines.
25. **S.L. 2009-528 (H 889).** See the summary of this session law in Criminal Law & Procedure, above.
26. **S.L. 2009-574 (H 945).** Authorizes the Legislative Research Commission to study guidelines for issuance of a limited driving privilege by the courts. The study arose from S 937, which proposed amendments to G.S. 20-20.1 that would allow judges greater discretion in granting limited privileges under that provision and permit the renewal of such privileges. For other studies to be undertaken, see the summary of this session law under Judicial Authority & Administration, below.

Judicial Authority & Administration

1. **S.L. 2009-270 (H 1438).** See the summary of this session law under Criminal Law & Procedure, above.
2. **S.L. 2009-278 (S 357).** Gives the Business Court exclusive jurisdiction to resolve disputes when municipalities or electric membership corporations cannot agree with

telephone companies, cable television systems or internet service providers on the terms by which those private entities may use the municipal or membership corporation poles and conduits. Also gives that court exclusive jurisdiction to resolve disputes between the same entities over whether attachments have been made properly, whether the remedial actions taken for improper attachments were justified, and the like. Effective July 10, 2009.

3. **S.L. 2009-335 (S 817).** Under G.S. 5A-12 the punishment for criminal contempt is censure, imprisonment for up to 30 days, a fine of up to \$500, or any combination of the three. This act amends the statute to allow a sentence of up to 120 days for criminal contempt for failure to comply with an order for child support, but the sentence has must be a suspended sentence and the suspension must be “upon conditions reasonably related to the contemnor’s payment of child support.” Effective for acts committed on or after December 1, 2009.
4. **S.L. 2009-341 (S 56).** Judicial District 13 consists of Bladen, Columbus, and Brunswick counties and elects six district judges. Until now, one judge had to live in Bladen, one in Columbus, and two in Brunswick; the other two were elected without regard to where they reside. This act designates a residency requirement for each of the six judgeships: one from Bladen, two from Columbus, and three from Brunswick. The law takes effect when precleared under Section 5 of the federal Voting Rights Act.
5. **S.L. 2009-356 (H 192).** See the summary of this session law under Criminal Law & Procedure, above.
6. **S.L. 2009-398 (H 1077).** See the summary of this session law under Criminal Law & Procedure, above.
7. **S.L. 2009-419 (S 514).** See the summary of this session law under Criminal Law & Procedure, above.
8. **S.L. 2009-421 (S 44).** Effective January 1, 2010, this legislation enacts a new G.S. 160A-393 setting the procedure for appeals of quasi-judicial decisions from city councils, planning boards, boards of adjustment, and other boards concerning zoning variances, special and conditional use permits, and the like. The appeals are by certiorari to the superior court and the same provisions apply to decisions by county boards. The legislation generally is intended to codify the existing procedure as best it is known and addresses issues such as standing, intervention, record on review, scope of the review, and the decisions available to the court. Even under the new act, there may be questions whether it allows appeals of local decisions on subdivision plats, and the answer may depend on wording of local ordinances.
9. **S.L. 2009-451 (S 202).** Among the provisions in the 2009 budget bill are:
 - G.S. 7A-44 is amended to eliminate the \$7,000 travel allowance for superior court judges. They will be reimbursed for travel expenses at the same rate as state employees generally.
 - G.S. 7A-65, -144 and -498.7 are amended to provide that prosecutors, district judges, and public defenders are to be reimbursed for business travel outside their home counties at the same rate as state employees generally.
 - For the 2009-11 biennium, the AOC may set a mileage reimbursement rate below the business standards mileage rate set by the Internal Revenue Service.

- Effective January 15, 2011, or when precleared under the federal Voting Rights Act if later than that, Prosecutorial District 11 is divided into 11A (Harnett and Lee counties) and 11B (Johnston). The current DA goes to 11B which also gets ten assistants, while 11A gets the other nine assistants and gets an appointed DA until the 2012 election.
- G.S. 7A-791 is amended to specify that DWI treatment programs fit under the drug treatment court statutes.
- The AOC is to report to the legislative appropriations committee chairs each March on the workload, age of cases and annual expenditures of the Business Court.
- G.S. 7A-455.1 is amended to declare that the court may not waive or remit the \$50 fee to be paid by the defendant for appointment of counsel in a criminal case. The AOC is to report the recoupment rates quarterly to the Joint Legislative Commission on Governmental Operations.
- Many court fees are increased, as will be reported in detail by the AOC. The fees in criminal cases include a \$2 charge to be split between the Criminal Justice Education and Training Standards Commission and the Sheriffs' Education and Training Standards Commission, and an extra \$5 for motor vehicle offenses.
- Courts can put defendants on installment plans for payment of fees, with a \$20 setup charge to cover the additional handling costs of installments.
- The courts get to retain a collection assistance fee of 10 percent of any fee collected and paid to an entity other than the Judicial Department or the General Fund.
- The appropriations committees are to review whether to continue, reduce or eliminate the sentencing services program in the Office of Indigent Defense Services. The program is to report to the Fiscal Research Division by December 1, 2009.
- The Office of State Controller is to continue development of the criminal justice data integration pilot program in Wake County and demonstrate full operational capability there before it is expanded to other areas. The controller is to develop a plan for statewide expansion and to recommend by August 31, 2009, a state agency data center to host the program.
- The AOC is exempted from the consolidation of the state's information technology infrastructure.
- The Post-Release Supervision and Parole Commission is to study the amount of time served by each inmate eligible for parole on or before July 1, 2010, and determine how it compares with the time that would be served under structured sentencing's maximum sentence. The commission is to reinstate the parole process for each offender who has served more time than would have been served under structured sentencing.
- By May 1, 2010, the Department of Correction and AOC are to complete a feasibility study of conducting pre-sentence investigations on all offenders convicted of felonies for which the judge has the option of intermediate or active punishments. The study is to include both rural and urban districts in a pilot implementation.

10. S.L. 2009-452 (S 851) and S.L. 2009-516 (H 1269). See summaries of these session laws in Criminal Law & Procedure, above, for the provisions affecting drug treatment courts. For other provisions of S.L. 2009-516, see the summary below in this section.

11. **S.L. 2009-510 (S 262).** Effective October 1, 2010, new standards are put in place for the clerk of court to notify agencies and private vendors that criminal records have been ordered expunged and for those agencies and vendors to expunge their own records. New G.S. 15A-150 requires the clerk to send expunction orders to law enforcement agencies, DMV and the Department of Correction (DOC), as well as to the AOC, and for the law enforcement agencies in turn to notify the SBI which notifies the FBI. The expunction order itself now will include directions to DMV and DOC to clear their records. A state agency receiving an expunction order must also notify any private vendor with which it has a licensing agreement for access to its records, and the vendor is required to expunge the record from its database. A new G.S. 15A-152 provides civil liability for a private vendor that fails to delete a record. The AOC still may retain a confidential file of expunged records with strictly limited access.
12. **S.L. 2009-513 (H 473).** See the summary of this session law under Criminal Law & Procedure, above.
13. **S.L. 2009-514 (H 775).** Effective December 1, 2009, a new Rule 616 is added to Chapter 8C to set a procedure for witnesses with developmental disabilities or mental retardation to testimony remotely in civil cases and special proceedings. The act provides for a hearing on whether the witness would suffer emotional distress from live testimony and that the witness' ability to communicate would be impaired by testifying in the presence of a party or in public. The same procedure is provided for criminal cases by adding a new G.S. 15A-1225.2.
14. **S.L. 2009-516 (H 1269).** This act makes several different changes affecting the courts:
 - If the facilities fees collected and paid to the county (and, in some cases, city) by the courts exceed the county's cost of providing the facility, the local government can use the excess money to retire indebtedness or otherwise supplement court operations. Now the local government will no longer need AOC approval for those other uses of the money.
 - The Judicial Department is taken out from under the internal audit structure in G.S. Chapter 143 for all state agencies, and an internal audit division is created within the AOC.
 - G.S. 7A-39 is amended to allow local court officials to cancel court for any catastrophic condition that makes it impossible or hazardous to reach the courts or creates a significant risk of physical harm. Previously, local officials could cancel only for adverse weather or other emergencies, and the catastrophic condition justification applied only to the chief justices' authority. The statute also is amended to further delineate the kinds of orders the chief justice can issue for emergencies and to specify that nothing in the statute is intended to diminish the courts' inherent authority.
 - As discussed in Criminal Law & Procedure, above, under S.L. 2009-452, the act also addresses district court supervision of superior court defendants put in drug treatment court programs.
15. **S.L. 2009-518 (S 293).** G.S. 9-4 is amended to allow, but not require, the register of deeds to store an electronic copy of the jury list for the county.
16. **S.L. 2009-574 (H 945).** The act authorizing studies between sessions allows the Legislative Research Commission to study, if it chooses, the calendaring of criminal

cases in superior court; whether superior court judges should all be elected separately and whether elections to fill superior court vacancies should be for full eight-year terms; and whether an independent office of prosecution services should be created within the Judicial Department to manage the budgetary aspects of district attorneys' offices. The Joint Legislative Elections Oversight Committee is authorized to study the appointment of judges and the Courts Commission is authorized to study whether the supreme court should have control over rules of evidence and rules of procedure for trial courts.

17. **S.L. 2009-577 (H 1329).** This legislation enacts a new G.S. 15A-145.1 to address expunction of records for street gang offenses; a new G.S. 15A-145.2 on expunction of records for drug offenses; and a new G.S. 15A-145.3 on expunction for toxic vapors offenses. Generally the new statutes simply recodify in a new section the existing expunction provisions now found in G.S. 14-50.29 and -50.30 (gang offenses), G.S. 90-96 (drug offenses) and G.S. 90-113.14 (toxic vapors). Where necessary the new statute specifies that the age limit qualification for expunction is determined by the defendant's age at the time of the offense, not the age at the time of conviction (*e.g.*, the gang related offense was committed before the defendant turned 18). The act also amends G.S. 15A-145 to provide that eligibility of first offenders for expunction under that statute is based on the person's age at the time of the offense, not at the time of conviction. Additionally, it adds a new subsection (d1) to G.S. 15A-145 providing for expunction of a conviction of misdemeanor larceny if the person has no prior felony convictions and the misdemeanor larceny conviction is more than 15 years old. The act applies to petitions for expunction filed December 1, 2009, or later.