

2009 LEGISLATION OF INTEREST TO COURT OFFICIALS

Ann Anderson (civil law & procedure)
Michael Crowell (judicial administration & courts generally)
Janet Mason (juvenile & related topics)
John Rubin (criminal law & related topics)
Shea Denning (motor vehicle law)
Jessica Smith, editor
UNC School of Government
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Civil Law and Procedure

There is no new legislation to report at this time.

Criminal Law & Procedure

- 1. S.L. 2009-6 (S 5).** G.S. 14-402(a) makes it unlawful for any person, firm, or corporation to sell, transfer, purchase, or receive any pistol or crossbow unless a license or permit is first obtained from the local sheriff by the purchaser or receiver. G.S. 14-402 through 14-406 deal with the issuance, terms, and other requirements for such a license or permit. Effective March 19, 2009, S.L. 2009-6 (S 5) adds G.S. 14-406.1 to provide that a corporation that is a manufacturer, wholesale dealer, or retail dealer of crossbows may obtain a continuing permit for the purchase or receipt of crossbows, with no expiration date, by applying to the sheriff of the county in which the corporation is located. In determining whether to issue the permit, the sheriff must apply the standards in G.S. 14-404, which set forth the criteria for issuing or refusing a permit. The act also amends G.S. 14-406 to exempt from the statutory record keeping requirements corporations that manufacture crossbows and wholesale dealers of crossbows for sale to other crossbow wholesale or retail dealers.
- 2. S.L. 2009-15 (H 105).** The 2008 General Assembly enacted the Interstate Wildlife Violator Compact, (G.S. 113-300.5 through 113-300.8) to establish a reciprocal program to deal with violations of wildlife laws by residents of member states. For a discussion of the compact, see John Rubin, *2008 Legislation Affecting Criminal Law and Procedure*, ADMINISTRATION OF JUSTICE BULLETIN No. 2008/06 (Nov. 2008), online at www.sog.unc.edu/programs/crimlaw/aoj.htm. Effective October 1, 2009, S.L. 2009-15 (H

105) amends the definition of “wildlife,” in Article II(15) of the Compact (within G.S. 113-300.6), to include animals protected or regulated by the Wildlife Resources Commission, Marine Fisheries Commission, and Division of Marine Fisheries in the Department of Environment and Natural Resources. The act also amends G.S. 113-300.7 to clarify the role of those agencies in administering the compact, providing among other things that each may suspend or revoke a person’s license to hunt, fish, trap, possess, or transport wildlife in North Carolina to the extent that the person’s license has been suspended or revoked by a member state.

3. **S.L. 2009-20 (H 613).** Effective April 30, 2009, 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 that has no existing military base at which aircraft squadrons are stationed; and that exclusive jurisdiction over any such land acquired by the United States is not ceded to the United States for any purpose. For a discussion of how this statute affects the power of state and federal authorities to prosecute violations of criminal laws committed on lands owned by the United States, *see* Robert L. Farb, *ARREST, SEARCH, AND INVESTIGATION IN NORTH CAROLINA* at p. 17 & n.60 (3d ed. 2003).
4. **S.L. 2009-25 (H 97).** G.S. 113-276 contains several exemptions from North Carolina’s licensing requirements for hunting and fishing. Effective July 1, 2009, S.L. 2009-25 (H 97) amends G.S. 113-276 to add an exemption for North Carolina residents who are members of the United States Armed Forces and are serving outside the state, or who are members of a reserve unit and are serving full-time active military duty outside the state, allowing them to hunt or fish in North Carolina without a license while on leave in North Carolina for thirty days or less.
5. **S.L. 2009-27 (H 2).** Effective January 2, 2010, S.L. 2009-27 (H 2) prohibits smoking in certain public places and authorizes local governments to enact no-smoking laws, subject to certain exceptions. Portions of the act are enforceable through the criminal justice system. Part 1B of Article 23 of G.S. Chapter 130A, which regulates smoking in state government buildings and vehicles, continues to provide (in G.S. 130A-493) that a violation is not a misdemeanor; no penalty is specified. Part 1C of Article 23 of G.S. Chapter 130A, which regulates smoking in restaurants, bars, and lodging establishments that prepare and serve food and drink, provides (in G.S. 130A-497) that a person who continues to smoke in a nonsmoking area, following oral or written notice by the person in charge of the area, commits an infraction, a noncriminal violation of the law punishable by a penalty up to \$50. A violation has no other consequences, and the person may not be assessed court costs. Part 2 of Article 23 of G.S. Chapter 130A, which authorizes local governments to restrict smoking in public places and in local government buildings, grounds, and vehicles, provides (in G.S. 130A-498) that continuing to smoke in violation of a local ordinance or other local rule, law, or policy constitutes an infraction, punishable by a penalty up to \$50, with no other consequences and no court costs. Revised G.S. 130A-22 provides that a local health director may impose administrative penalties (a written notice for a first and second violation and up to a \$200 penalty for a third and subsequent violation) on a person who manages, operates, or controls a place subject to Parts 1C or 2 and who fails to comply with those provisions. The act states that the General Assembly’s intent is also to restrict smoking in places of employment, and the revised statutes include references to employees, employers, and places of employment, but other than the places described above, the act does not specify any restrictions on smoking in places of employment and does not include any penalties. For a further discussion of the new smoking law, as well as other smoking prohibitions (such as

prohibitions on smoking in schools and prisons), *see* Aimee Wall, *Smoking in Public Places: Recent Changes in State Law*, HEALTH LAW BULLETIN No. 90 (May 2009), online at www.sog.unc.edu/pubs/electronicversions/pdfs/hlb90.pdf.

6. **S.L. 2009-37 (H 616)**. Effective for offenses committed on or after December 1, 2009, S.L. 2009-37 (H 616) adds G.S. 14-86.2 to make it a Class 1 misdemeanor for a person to:
 - steal, take from its temporary location or from any person having lawful custody thereof, or willfully destroy, deface, or vandalize
 - a chemical or portable toilet as defined in G.S. 130A-290 or a pumper truck operated by a septage management firm issued a permit under G.S. 130A-291.1.
7. **S.L. 2009-49 (H 85)**. G.S. 14-309.15 establishes limits on prizes for raffles conducted by nonprofit organizations and associations. Effective June 1, 2009, S.L. 2009-49 (H 85) raises the limit on cash prizes, and merchandise redeemable for cash, from \$50,000 to \$125,000 per raffle and raises the total amount that may be offered by any organization or association from \$50,000 to \$125,000 per calendar year. New G.S. 14-309.15(g) allows an exception to this limit, permitting real property to be offered as a raffle prize in an amount up to \$500,000 per raffle and \$500,000 per organization or association per calendar year.
8. **S.L. 2009-58 (S 617)**. In 1992, North Carolina first created the offense of stalking in G.S. 14-277.3. Since then, the General Assembly revised the definition of the offense and its punishment several times, in 1997, 2001, and 2003. In 2008, the General Assembly repealed G.S. 14-277.3 and enacted G.S. 14-277.3A in its place, incorporating many of the previous changes and making additional ones. *See* John Rubin, *2008 Legislation Affecting Criminal Law and Procedure*, ADMINISTRATION OF JUSTICE BULLETIN No. 2008/06 at pp. 17–18 (Nov. 2008), online at www.sog.unc.edu/programs/crimlaw/aoj.htm. In enacting the new statute, however, the General Assembly did not make conforming changes to other statutes that referred to stalking. Effective June 5, 2009, S.L. 2009-58 (S 617) amends several statutes to refer to G.S. 14-277.3A. They are: G.S. 14-415.12(b)(8) (concealed handgun permit); G.S. 15A-266.4(b)(3) (DNA sample); G.S. 15A-830(a)(7) (Crime Victims’ Rights Act); G.S. 15C-2(12) (address confidentiality program); G.S. 50B-1(a)(2) (domestic violence protective orders); G.S. 50C-1(6) (civil no-contact orders); G.S. 95-260(3)b. (civil no-contact order for employees).

Estates and Special Proceedings

There is no new legislation to report at this time.

Judicial Administration

There is no new legislation to report at this time.

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. S.L. 2009-38 (H 1272) 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

- rewrites G.S. 7B-1104 to reiterate that the juvenile is a party to the action;
- 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
- 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.

The act became effective May 27, 2009.

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.

Miscellaneous

1. **S.L. 2009-13 (H 494).** Amends GS 51-1 to authorize superior court judges to perform marriages between April 8 and April 15, 2009.