

## 2021 Legislation Affecting Criminal Law and Procedure

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Revised January 14, 2022

Below are summaries of 2021 legislation affecting criminal law, criminal procedure, and motor vehicle law. To obtain the text of the legislation, click on the link provided below or go to the General Assembly's website, [www.ncleg.gov](http://www.ncleg.gov). Be careful to note the effective date of each piece of legislation.

- 1) **[S.L. 2021-24 \(S 69\)](#): DMV licensing requirements.** Effective for applications for licenses submitted on or after May 24, 2021 and set to expire December 31, 2021, this act amends G.S. 20-11 to require a person who is at least 16 years old but less than 18 years old to have held a limited learner's permit for at least six months in order to obtain a limited provisional license. Previously, the requirement was twelve months.
  
- 2) **[S.L. 2021-33 \(S 241\)](#): Modified utility vehicles.** S.L. 2020-40 has defined and regulated modified utility vehicles. Effective October 1, 2021, this act redefines a modified utility vehicle as motor vehicle that
  - a. is manufactured or upfitted for off-road use;
  - b. has four wheels;
  - c. has headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, parking brakes, rearview mirrors, speedometer, seat belts, and a vehicle identification number (VIN);
  - d. is at least 110 inches long, at least 58 inches wide, and at least 60 inches tall;
  - e. has a maximum speed of at least 40 miles per hour; and
  - f. does not require an operator or passenger to straddle a seat.

The act eliminates the requirement that modified utility vehicles have an engine displacement of greater than 2400 cubic centimeters. The act also eliminates the requirement that modified utility vehicles be equipped with windshields and windshield wipers but provides that the driver of and all passengers on a modified utility vehicle that is not equipped with a windshield and windshield wipers must wear a safety helmet. The act amends G.S. 20-121.1 to specify that, while modified utility vehicles generally may be operated only on roadways where the posted speed limit is 55 miles per hour or less, they may only be operated on a roadway with four or more travel lanes if the posted speed limit is 35 miles per hour or less. For further discussion, see Shea Denning, [2021 Legislation Amends Rules for Modified Utility Vehicles](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Jul. 26, 2021).

- 3) **[S.L. 2021-36 \(H 743\)](#): Altering, destroying, or removing personal identification marks.** Effective for offenses committed on or after December 1, 2021, this act amends G.S. 14-160.1(c) to make alteration, destruction, or removal of permanent identification marks from personal property a Class 1 misdemeanor if the personal property was valued at one thousand dollars (\$1,000) or less at the time of the offense or a Class H felony if the personal property was valued at more than one

thousand dollars (\$1,000) at the time of the offense. This punishment likewise applies to knowingly selling, buying, or being in possession of personal property of another on which the permanent identification marks have been altered, defaced, destroyed, or removed.

This act also amends G.S. 14-401.4(d) to make willfully removing, defacing, destroying, altering or covering over any manufacturer's number or other distinguishing number or identification mark on any machine or other apparatus a Class 1 misdemeanor if the farm machinery, farm equipment, or farm apparatus was valued at less than \$1,000 at the time of the offense or (2) a Class H felony if the farm machinery, farm equipment, or farm apparatus was valued at \$1,000 or more at the time of the offense.

- 4) **S.L. 2021-47 (S 255): Administration of justice.** This act makes several changes to North Carolina's laws governing the administration of justice.

*Order for arrest for failure to appear.* Effective for orders and arrests issued on or after June 18, 2021, section 6 of the act amends G.S. 15A-305 to specify that an order for arrest can only be issued for a defendant's failure to appear as required by a duly executed criminal summons if the summons charged the defendant with a criminal offense.

*Court plea exceptions.* Effective for pleas received on or after June 18, 2021, section 7 of the act revises G.S. 15A-1011 to expand the types of cases authorized for pleas to be received outside of open court. This includes written pleas for the types of offenses specified in G.S. 7A-273(2) and G.S. 7A-273(2a) authorized under G.S. 7A-148(a) (including misdemeanor or infractions cases for alcohol offenses, traffic offenses, hunting, fishing, State park and recreation area rule offenses, boating offenses, open burning offenses and littering offenses, and misdemeanor dune or beach buggy county ordinance violations).

*Court proceedings by audio/video transmission.* Effective for all proceedings occurring on or after June 18, 2021, section 9 of the act enacts G.S. 7A-49.6 granting a general authorization for judicial officials to conduct proceedings of all types using an audio and video transmission in which the parties, the presiding official, and any other participants can see and hear each other. The law mandates:

- Each party to a proceeding involving audio and video transmission must be able to communicate fully and confidentially with his or her attorney if the party is represented by an attorney.
- In a civil proceeding involving a jury, the court may allow a witness to testify by audio and video transmission only upon finding in the record that good cause exists for doing so under the circumstances.
- A party may object to conducting a civil proceeding by audio and video transmission. If the presiding official finds that the party has demonstrated good cause for the objection, the proceeding must not be held by audio and video transmission. If there is no objection, or if there is an objection and good cause is not shown, the presiding official may conduct the proceeding by audio and video transmission.
- Except as otherwise permitted by law, when the right to confront witnesses or be present is implicated in criminal or juvenile delinquency proceedings, the court may not proceed by

audio and video transmission unless the court has obtained a knowing, intelligent, and voluntary waiver of the defendant's or juvenile respondent's rights.

- Proceedings conducted by audio and video transmission shall be held in a manner that complies with any applicable federal and State laws governing the confidentiality and security of confidential information.
- If the proceeding is one that is open to the public, then the presiding official must facilitate access to the proceeding by the public and the media as nearly as practicable to the access that would be available were the proceeding conducted in person.
- If the proceeding is required by law to be recorded, then the audio and video transmission must be recorded in accordance with G.S. 7A-95, G.S. 7A-198, and other laws, as applicable.
- This section is not intended to limit the court's authority to receive remote testimony pursuant to statutes that otherwise permit it.
- All proceedings under this section shall be conducted using videoconferencing applications approved by the Administrative Office of the Courts.

Section 11 of the act repeals language in other statutes relating to authority to conduct specific proceedings using audio or video technology to reflect the new general authorization for judicial officials to conduct any proceeding using audio or video transmission pursuant to G.S. 7A-49.6.

*Assignment of emergency judges.* Effective June 18, 2021 and expiring July 1, 2022, section 12 of the act authorizes the Chief Justice of the Supreme Court to expand the active list of emergency superior court judges to no more than 25, notwithstanding the limit of 10 set in G.S. 7A-52(a). This section expands the Chief Justice's authority to include assignment of emergency judges to hold regular or special sessions of court to address case management issues created by the COVID-19 pandemic.

*Magistrate conduct.* Effective for magistrate conduct on or after October 1, 2021, section 13 of the act enacts G.S. 7A-171.3 to direct the Administrative Office of the Courts (AOC) to prescribe rules of conduct for magistrates, including standards of professional conduct and timeliness, required duties and responsibilities, and methods for ethical decision making. The law requires the AOC to prescribe the rules by October 1, 2021 and requires the rules to be consistent with the US and State constitutions.

*Notice of expunction orders.* Section 15 of the act amends G.S. 15A-150(b) to specify that expunctions granted pursuant to G.S. 15A-146(a4) (governing cases when charges are dismissed or there are findings of not guilty) are excluded from all clerk of superior court notice provisions of subsection (b). This section also revises G.S. 15A-150(e) to authorize the Administrative Office of the Courts (AOC) to provide notice to State and local agencies of expunctions grants pursuant to G.S. 15A-146(a4).

*Service of motions.* Effective for motions made on or after July 1, 2021, section 16 of the act amends G.S. 15A-951(b) and (c), regarding service and filing of motions, to require service upon the attorney or defendant as provided in G.S. 1A-1, Rule 5 and to require filing proof of service with the court by filing a certificate of service as provided by Rule 5(b1). The act eliminates the existing service requirements that limit service to delivery or mail.

*Declarations under penalty of perjury.* Effective December 1, 2021, section 17 of the act enacts G.S. 7A-98 to allow for matters filed electronically pursuant to rules promulgated by the Supreme Court to be supported, evidenced, established, or proved by unsworn declaration in writing, subscribed by the declarant and dated, that the statement is true under penalty of perjury, rather than under oath or affirmation. The law provides that declarations given pursuant to this section shall be deemed sufficient if given in substantially the following form: "I declare (or certify, verify, or state) under penalty of perjury under the laws of North Carolina that the foregoing is true and correct. Executed on (date). (Signature)."

The law further bars using unsworn statements for oral testimony; oaths of office; any statement under oath or affirmation required to be taken before a specified official other than a notary public; any self-proved will or codicil executed pursuant to G.S. 31-11.6; and any real property deed, contract, or lease requiring an acknowledgement pursuant to G.S. 47-17.

Section 17(b) of the act expands G.S. 14-209 to include knowingly and intentionally making a false statement in any unsworn declaration deemed sufficient pursuant to G.S. 7A-98 perjury, a Class F felony.

- 5) **[S.L. 2021-68 \(H 238\): Possession of credit card skimming devices.](#)** Effective for offenses committed on or after December 1, 2021, the act enacts new G.S. 14-113.9(a)(6), which prohibits the knowing possession, sale, or delivery of a skimming device. The new provision does not apply to an employee, officer, or agent of any of the following while acting within the scope of the person's official duties: a law enforcement agency; state or federal court; agency or department of the state, local, or federal government; and a financial or retail security investigator employed by a merchant.

The act also amends G.S. 12-113.8 to add subsection (11), which defines a skimming device as a self-contained device that

- i. is designed to read and store in the device's internal memory information encoded on the computer chip, magnetic strip or stripe, or other storage mechanism of a financial transaction card or from another device that directly reads the information from a financial transaction card and
- ii. is incapable of processing the financial transaction card information for the purpose of obtaining, purchasing, or receiving goods, services, money, or anything else of value from a merchant.

The act amends the existing definition of "scanning device" under G.S. 12-113.8(10) to specifically exclude a skimming device. For further discussion, see Brittany Williams, [New Criminal Provision Prohibiting the Possession of Skimming Devices](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (July 6, 2021).

- 6) **[S.L. 2021-89 \(H 297\): DMV exemptions for deployed Armed Forces.](#)** Effective for any application to remotely convert a provisional license submitted on or after October 1, 2021, this act amends G.S. 20-7 to require the Division of Motor Vehicles to offer remote conversion to the holder of a full provisional license issued to a State resident if the provisional license holder is deployed out-of-state as a member of the US Armed Forces. This act also adds new subsection (d) to G.S. 20-35 to provide

a defense for the offense of driving without a license if the person was deployed as a member of the US Armed Forces when the license expired and has obtained a renewed license within 30 days after returning from deployment.

- 7) **[S.L. 2021-94 \(H 522\): Service/release of alternate jurors.](#)** Effective for jurors and alternate jurors selected on or after October 1, 2021, this act modifies provisions regulating the service and release of alternate jurors. The act amends G.S. 15A-1215(a) to (1) direct courts to ensure alternate jurors do not discuss the case with anyone until they become a juror or are discharged; (2) permit alternate jurors to become jurors at any time before a verdict is rendered; (3) require that jury deliberations begin anew when an alternate juror becomes a juror; (4) provide that no more than twelve jurors can participate in deliberations; (5) provide that alternate jurors must be discharged at the same time and in the same manner as the original jury. For further discussion, see Shea Denning, [Replacing a Juror After Deliberations Begin](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Aug. 5, 2021).
- 8) **[S.L. 2021-107 \(H 312\): Disclosure of felony convictions for the office of sheriff.](#)** Effective for elections and appointments to the office of sheriff on or after October 1, 2021, this act amends G.S. 162-2 to disqualify a person who has been convicted of any felony from holding the office of sheriff. The act requires any candidate for sheriff to file a valid disclosure statement at the time of filing a notice of candidacy in accordance with new G.S. 17E-20 verifying that the individual has no prior felony convictions or expungements of felony convictions.

The act further enacts new Article 3 of Chapter 17 of the General Statutes to provide for the process for a candidate for the office of sheriff to request the North Carolina Sheriffs' Education and Training Standards Commission to prepare a disclosure statement verifying that the individual has no prior felony convictions or expungements of felony convictions. Under this Article, and notwithstanding G.S. 15A-145.4 or G.S. 15A-145.5, the Commission may gain access to a candidate's felony conviction records, including those maintained in confidential files containing the names of persons granted expunctions.

- 9) **[S.L. 2021-115 \(H 84\): Sex offender premises restrictions.](#)** Effective for offenses committed on or after December 1, 2021, section 1 of this act amends G.S. 14-208.18 to add that people required to register who have committed any sexual exploitation of a minor offense in violation of G.S. 14-190.16, G.S. 14-190.17, or G.S. 14-190.17A, or substantially similar federal offenses or substantially similar offense in another state, are prohibited from knowingly being at the following locations:
- (1) on the premises of any place intended primarily for the use, care, or supervision of minors such as schools, nurseries, and playgrounds;
  - (2) within 300 feet of any location intended primarily for the use, care, or supervision of minors when the place is located on premises that are not intended primarily for the use, care, or supervision of minors;
  - (3) any place where minors frequently congregate such as libraries, amusement parks and swimming pools, when minors are present; and
  - (4) on the State Fairgrounds during the period that the State Fair is conducted annually, the Western NC Agricultural Center grounds during the period the NC Mountain State Fair is

conducted, and on any other fairgrounds during the period an agricultural fair is being conducted.

Effective for petitions filed on or after December 1, 2021, section 2 of this act amends G.S. 15A-145 to exclude offenses requiring registration from eligibility for the expunction of records for first offenders under the age of 18 at the time of conviction of certain misdemeanors, regardless of whether the person is currently required to register.

Section 3 of this act amends G.S. 14-208.16 to prohibit registrants from knowingly residing at (1) any location which is within 1,000 feet of any property line of a property on which any public or nonpublic school or childcare center is located or (2) within any structure, any portion of which is within 1,000 feet of any property line of a property on which any public or nonpublic school or childcare center is located. These residential restrictions apply to any registrant who did not establish his or her residence, in accordance with G.S. 14-208.16(d), prior to August 16, 2006. Section 3 of this act becomes effective December 1, 2021 and applies to offenses committed on or after that date by all people registered or required to register on or after that date.

**10) [S.L. 2021-118 \(S 301\)](#), as amended by section 2.3 of [S.L. 2021-167 \(H 761\)](#): **Expunction eligibility for certain misdemeanors and felonies.** Effective for petitions filed on or after December 1, 2021, the act expands the opportunities for a person to expunge older convictions of “nonviolent” felonies and misdemeanors under G.S. 15A-145.5 but with more complex eligibility conditions. In addition to authorizing expunction of up to three convictions for nonviolent felonies after a twenty-year waiting period, the act modified the definition of offenses that are not considered “nonviolent” and that disqualify a person from obtaining relief; revised the existing eligibility criteria to expunge convictions for one or more nonviolent misdemeanors and one nonviolent felony; created procedures for expunging convictions for nonviolent misdemeanors and felonies from more than one county; and included a legacy clause exempting people who filed a petition before the effective date of the act from some of the new eligibility criteria. For a detailed analysis, see John Rubin, [2021 Changes to North Carolina’s Expunction Laws](#), N.C. CRIM. L., UNC SCH. OF GOV’T BLOG (Dec. 8, 2021).**

**11) [S.L. 2021-123 \(S 207\)](#): **Changes to Raise the Age.** Effective for offenses committed on or after 12/1/2021, this act makes several changes to the Juvenile Justice Reinvestment Act.**

*Extended Commitments.* Section 1 of this act allows for extended commitments to the youth detention center for offenses committed at ages 16 and 17, per the chart below:

Age at offense	Offense type	Commitment to age
Any	first degree murder, first-degree forcible rape, first-degree statutory rape pursuant, first-degree forcible sexual offense, or first-degree statutory sexual offense	21
Under 16	Other B1 - E	19
16	Other B1 - E	20
17	Other B1 - E	21

Section 1 of the act makes conforming changes for release to Post Release Supervision 90 days prior to aging out of custody for offenses at 16 and 17, and conforms a court’s authority to modify or vacate orders to maximum terms of dispositions for offenses at 16 and 17, including new extended commitments.

*Reverse waiver and transfer.* Section 3 of the act amends G.S. 7A-271 to give a superior court authority to issue a secure custody order when remanding a case to district court. The district court must have a secure custody hearing within 10 days and then ongoing secure custody hearings must be held pursuant to the usual schedule in G.S. 7B-1906(b1).

*Prosecutorial discretion.* Section 4 of the act amends G.S. 7B-2200.5 to add new subsection (a1) which allows a prosecutor to decline to transfer a mandatory transfer case for an offense at age 16 or 17, where the most serious offense charged is a Class D, E, F, or G felony. The prosecutor can change their mind any time prior to adjudication.

*Minimum age.* Section 5 of the act amends G.S. 7B-1501 to raise the minimum age of delinquency to 8 for all offenses. This part of the act establishes limited delinquency jurisdiction for offenses committed at ages 8 and 9 for only for Class A – G felonies and for any child who has a previous adjudication of delinquency and is charged with a new crime. It also raises the minimum age for undisciplined jurisdiction to 10.

New G.S. 7B-1501(1a) creates child consultation services for “vulnerable juveniles,” which is defined in new G.S. 7B-1501(27b) as children ages 6 – 9 who commit a crime or infraction and are not delinquent. Consultations can last up to 6 months with a possible 3-month extension and consist of case management – screening, assessment, community resources, and programming—to child and parent. The juvenile court counselor must work collaboratively with a Juvenile and Family Team, to include the parent, guardian, or custodian of the juvenile, the Department of Social Services, the local management entity or managed care organization, the local education authority, and all other community stakeholders involved with the juvenile and family.

*New Article 27A.* Section 5 of this act also amends Chapter 7B of the General Statutes to add new Article 27A to the Juvenile Code, titled “Authority Over Parents, Guardians, or Custodians of Vulnerable Juveniles Who Are Receiving Juvenile Consultation Services.” The new Article requires the following of these parents, guardians, or custodians:

- if given sufficient notice, attend all scheduled meetings with the juvenile court counselor.
- if directed by the juvenile court counselor, attend parental responsibility classes that are available in the district where the parent, guardian, or custodian resides.

The juvenile court counselor is required to engage parents, guardians, and custodians in the following ways:

- work to obtain any medical, surgical, psychiatric, psychological, or other evaluation or treatment as needed for the juvenile. This includes finding a means for paying for such services, including helping the parent, guardian, or custodian to apply for Health Choice and/or Medicaid.
- with written recommendations of a qualified physician, surgeon, or mental health provider, advise the parent, guardian, or custodian to be directly involved in the juvenile’s evaluation

or treatment and participate in medical, psychological, or other evaluation or treatment of the juvenile that is in the juvenile's best interests.

- work collaboratively with the Juvenile and Family Team. The Juvenile and Family Team is to include the parent, guardian, or custodian; the Department of Social Services (DSS); the local management entity or managed care organization; the local education authority; and all other community stakeholders involved with the juvenile and family. The Juvenile and Family Team and all local community agencies involved with the juvenile and their family must be invited to all meetings scheduled with the juvenile and their parent, guardian, or custodian.

The juvenile court counselors may opt to work with parents, guardians, and custodians. This includes:

- with written orders or recommendations from a qualified mental or physical health provider that are directed toward remedying behaviors or conditions that led to or contributed to the juvenile consultation, recommend that the parent, guardian, or custodian undergo psychiatric, psychological, or other evaluation or treatment or counseling.
- with written orders or recommendations from a qualified mental or physical health provider, recommend that the parent, guardian, or custodian seek funding through the Division of Juvenile Justice and/or the local management entity and managed care organization to pay the cost of any evaluation or treatment recommended for the parent, guardian, or custodian.
- to the extent they are able to do so, transport the parent, guardian, or custodian and the juvenile to keep an appointment or to comply with the recommendations of the juvenile court counselor.

The juvenile court counselor must make a report to the DSS if a parent, guardian, or custodian refuses to follow the recommendations of the Juvenile and Family Team and the refusal puts the juvenile at risk of abuse, neglect, or dependency. The DSS may file an abuse, neglect, or dependency petition pursuant to the usual process DSS follows under G.S. 7B-403. The definition of neglected juvenile contained in G.S. 7B-101 is amended to include any juvenile less than 18 years of age whose parent, guardian, or custodian has refused to follow the recommendations of the Juvenile and Family Team.

*Mental health evaluations.* Section 8 of this act amends G.S. 7B-2502 to include the following provisions:

- After adjudication, in a case with suspected mental illness, developmental disability, or intellectual disability, the court shall order JJ to make a referral for a CCA or equivalent mental health assessment, unless one was conducted within the last 45 days before the adjudication hearing
- If an assessment is ordered and, after reviewing the results, the court finds that there is sufficient evidence that the juvenile has severe emotional disturbance, developmental disability, or intellectual disability that substantially contributed to the delinquent behavior, and juvenile is eligible for a Level 3 disposition and/or recommended for a PRTF, the court shall order a care review team to be convened by JJ.



- The care review team must submit a recommendation to the court within 30 days of the order convening the team
- The court must review the care team’s recommendation when determining disposition pursuant to G.S. 7B-2501(c).

For further discussion on this session law, see Jacquelyn Greene, [From 6 to 10: New Minimum Age for Juvenile Delinquency and Undisciplined Jurisdiction](#), N.C. CRIM. L., UNC SCH. OF GOV’T BLOG (Oct. 4, 2021).

**12) S.L. 2021-128 (H 692): Restricting certain vehicle modifications.** Effective for offenses committed on or after December 1, 2021, this act amends G.S. 20-135.4(d) to prohibit operation of vehicles on the highway if, by alteration of the suspension, frame, or chassis, the height of the front fender is 4 or more inches greater than the height of the rear fender. Pursuant to G.S. 20-176, a violation of this provision is an infraction. This act also adds new subsection (17) to G.S. 20-17 to include a third or subsequent conviction for violating G.S. 20-135.4(d) as one of the offenses for which the DMV must revoke an individual’s license. The act amends G.S. 20-19 to require that the license revocation be for at least one year.

**13) S.L. 2021-137 (H 536): Law enforcement duty to intervene.** Effective for uses of force that occur on or after December 1, 2021, section 1 of this act adds new subsection (d1) of G.S. 15A-401, which establishes the duty of law enforcement officers who observe another officer using excessive force to intervene, if safe to do so, to prevent the use of excessive force. The observing officer is required to report use of excessive force within 72 hours, even if the officer was unable to intervene. For further discussion, see Shea Denning, [New Requirement that Law Enforcement Officers Intervene and Report Excessive Use of Force](#), N.C. CRIM. L., UNC SCH. OF GOV’T BLOG (Sept. 13, 2021).

**14) S.L. 2021-138 (S 300): Criminal justice reform.** This act makes several changes to North Carolina’s laws related to criminal justice.

*First appearance (as amended by section 2.5 of S.L. 2021-182 (S 183)).* Effective for criminal processes served on or after December 1, 2021, G.S. 15A-601 is amended to modify the first appearance process. G.S. 15A-601(a) is amended to include defendants charged with misdemeanors and held in custody via a magistrate’s order under G.S. 15A-511 or one of the criminal processes charging crimes covered by Article 17 (citation or warrant for arrest). G.S. 15A-601(c) has been amended to change the deadline for first appearances from 96 hours to 72 hours. This portion of the law was further amended by section 2.5(a) of S.L. 2021-182 to provide that if the courthouse is closed for transactions for a period longer than 72 hours, the first appearance must be held within 96 hours after the defendant is taken into custody or at the first regular session of the district court in the county, whichever occurs first.

S.L. 2021-182 also reverses one change made in the previous amendment of this statute, removing magistrates from G.S. 15A-601(e) as a judicial official who may conduct first appearance if a district court judge is not available. The clerk of court remains authorized to conduct first appearance when a district court judge is not available. For further discussion, see Tom Thornburg, [North Carolina’s](#)

[First Appearance Process Amended for Second Time in this Legislative Session](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Nov. 29, 2021).

*Satellite-based monitoring.* Effective for satellite-based monitoring (SBM) determinations on or after December 1, 2021, section 18 of this act makes substantial amendments to the SBM law in response to constitutional issues noted in *State v. Grady*, 372 N.C. 509 (2019), and other cases. The act adds new G.S. 14-208.39 to make a legislative finding that SBM is an effective tool to deter criminal behavior among sex offenders. The act replaces existing references to recidivists with the new term reoffender, defined in subsection G.S. 14-208.6(3e) as a person with two or more convictions for a felony that requires sex offender registration. The act amends the SBM statutes (G.S. 14-208.40A for hearings conducted at sentencing and G.S. 14-208.40B for so-called “bring-back” hearings) to require the Division of Adult Correction and Juvenile Justice (DACJJ) to conduct a risk assessment on all categories of SBM-eligible defendants, and to limit SBM only to those the judge determines require the highest possible level of supervision and monitoring. For sexually violent predators, reoffenders, those convicted of an aggravated offense, and those convicted of statutory rape or sexual offense of a child by an adult, the length of SBM enrollment is reduced from life to 10 years. For defendants eligible for SBM by virtue of an offense involving the physical, mental, or sexual abuse of a minor, the act caps the permissible duration of the period of monitoring determined by the court at 10 years. The act amends the risk assessment process, which under prior law allowed DACJJ a minimum of 30 days but no more than 60 days to complete each assessment, to say that DACJJ now has “up to 60 days” to complete it, with no minimum period.

In addition to its changes to the rules for SBM eligibility and duration, the act amends the process for terminating or modifying SBM. Amended G.S. 14-208.43 now provides that reoffenders, aggravated offenders, sexually violent predators, and defendants convicted of statutory rape of a child by an adult or statutory sexual offense with a child by an adult ordered to enroll in SBM for 10 years may, 5 years after the date of initial enrollment, petition the superior court in the county of conviction for termination or modification of their SBM enrollment period. Previously, offenders in those categories would have been allowed to petition the Post-Relief Supervision and Parole Commission for removal. The court may grant the offender’s petition only after a hearing finding (1) that the offender has been enrolled in SBM for at least 5 years, and (2) that he or she no longer requires the highest possible level of supervision and monitoring for 10 years. If the court can make those findings, it can either terminate the offender’s SBM immediately, or order the person to remain enrolled for a specified time not to exceed a total of 10 years. If the court does not grant any relief, the person can petition again two years from the date of the denial. G.S. 14-208.43(f). The district attorney must receive notice of the petition at least three weeks before any hearing on the matter. At the hearing, the defendant and the State may present evidence, and the victim may appear and be heard, either through an oral statement, a written statement, or submission of an audio or video statement. The judge must ask if the victim is present and wishes to be heard. G.S. 14-208.43(c). The act also adds new G.S. 14-208.46, which allows defendants ordered to enroll in lifetime SBM before December 1, 2021, to petition the court to have SBM terminated after 10 years. The new section says that offenders enrolled in SBM for life may, five years after their initial enrollment, petition the superior court in the county of conviction for termination or modification of SBM. If the person has not yet been enrolled for 10 years, the court shall order the person to remain enrolled for a total of 10 years. G.S. 14-208.46(d). If the person has already been enrolled for more

than 10 years, the court shall order SBM terminated immediately. G.S. 14-208.46(e). Hearing procedures are similar to those described above for G.S. 14-208.43.

The act makes conforming changes to various conditions of probation, parole, and post-release supervision, as well as the statutes pertaining to probation officers' delegated authority, in recognition of the fact that all categories of SBM now require a risk assessment and a judicial finding that the defendant requires the highest possible level of supervision and monitoring. G.S. 15A-1344(e2), which had required SBM as a condition of probation for certain offenders whose probation was extended, is repealed.

An uncodified provision of the act, S.L. 2021-138, Sec. 18(o), instructs the state's elected district attorneys (or the Attorney General, at a district attorney's request), to review the cases of all individuals who fall in the same category as the defendant in *State v. Grady*, that is, persons enrolled in lifetime SBM based solely on their status as a recidivist, who are no longer supervised through probation, parole, or post-release supervision. The provision instructs DACJJ to provide each elected district attorney a list of all such enrollees in their district for a review of whether those enrollees might be subject to SBM on some other basis. If the DA makes a preliminary determination that some other basis might apply, he or she may petition the court for a hearing on the matter, to be resolved under G.S. 14-208.40A as amended by the new law. For further discussion, see Jamie Markham, [Revisions to North Carolina's Satellite-Based Monitoring Law](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Oct. 11, 2021).

*Resist, delay, obstruct offenses.* Effective for offenses committed on or after December 1, 2021, section 19 of this act amends G.S. 14-223 to create new crimes for willfully and unlawfully resisting, delaying, or obstructing an officer and causing serious injury to an officer in the process. New G.S. 14-233(b) makes it a Class I felony to willfully and unlawfully resist, delay, or obstruct a public officer in discharging or attempting to discharge an official duty if the resistance, delay, or obstruction proximately causes an officer's serious injury. New G.S. 14-233(c) makes this behavior a Class F felony if it is the proximate cause of an officer's serious bodily injury. New G.S. 14-233(d) defines "serious bodily injury" as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

- 15) [S.L. 2021-154 \(S 99\): Theft of catalytic converters.](#)** Effective for offenses committed on or after December 1, 2021, section 1 of this act amends G.S. 14-72.8 to make larceny of a catalytic converter a Class I felony. The changes create a presumption of felony larceny of a catalytic converter when a person is in possession of a catalytic converter that has been removed from a motor vehicle, unless the person is (1) an employee or agent of a company or an individual acting in their official duties for a motor vehicle dealer, motor vehicle repair shop, secondary metals recycler, or salvage yard that is licensed, permitted, or registered pursuant to State law; or (2) an individual who possesses vehicle registration documentation indicating that the catalytic converter in the individual's possession is the result of a replacement of a catalytic converter from a vehicle registered in that individual's name.

**16) [S.L. 2021-155 \(S 321\): Controlled Substance Act amendments.](#)** This act makes various technical and substantive changes to the controlled substance provisions in Chapter 90 of the North Carolina General Statutes.

Section 1 of the act amends G.S. 90-87(14a) to redefine “isomer” as the optical isomer, unless otherwise specified, and amends G.S. 90-87(17) to include both optical and geometric isomers of cocaine in the definition of “narcotic drug”. The act makes conforming changes to various drug-related statutes, specifying that “isomer” includes optical, positional, and geometric isomers.

Section 2 of the act amends G.S. 90-89 to expand the list of Schedule I substances to include various new opiate substances (including their optical and geometric isomers), fentanyl derivatives, and opium derivatives (including their optical, geometric, and positional isomers). Various hallucinogens (including their optical, geometric, and positional isomers) were also added, specifically including substituted tryptamines and substituted phenylcyclohexylamines. The list of Schedule I systemic depressants in G.S. 90-89(4) was expanded to include clonazepam, flualprazolam, and flubromazolam. The list of Schedule I stimulants in G.S. 90-89(5) was amended to include the various isomers of mephedrone, MDPV, substituted cathinones, and NBOMe compounds. The same list was expanded to define and include substituted phenethylamines and N-Benzyl phenethylamines.

Section 3 of the act amends G.S. 90-90(2) to add Norfentanyl to the list of Schedule I opiates and opioids.

Section 6 of the act amends G.S. 90-92(1) to add several substances to the list of Schedule IV substances, including the depressants desalkylflurazepam, diclazepam, and designer benzodiazepines. The statute was further amended to specify that the optical, geometric, and positional isomers of fenfluramine are included within the prohibition of G.S. 90-92(2).

Section 7 of the act amends G.S. 90-95(d)(2) to include fentanyl and carfentanil among the list of substances for which possession in any amount is punishable as a class I felony offense. This amendment resolves the issue of misdemeanor fentanyl charges. For further discussion, see Phil Dixon, [Possession of Fentanyl](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Nov. 17, 2020).

Section 8.5 of the act amends G.S. 90-93(4) to add Cenobamate and Lasmiditan to the list of anticonvulsant Schedule V drugs.

**17) [S.L. 2021-167 \(H 761\): Police vehicle and equipment protection.](#)** Effective for offenses committed on or after December 1, 2021, this act amends G.S. 14-56 to increase the penalty for breaking or entering into railroad cars, motor vehicles, trailers, aircraft, boats, or other watercrafts to a Class H felony if: (1) the railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind is owned or operated by any law enforcement agency, the North Carolina National Guard, or any branch of the Armed Forces of the United States; and (2) the person knows or reasonably should know that the railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind is owned or operated by any law enforcement agency, the North Carolina National Guard, or any branch of the Armed Forces of the United States.

Section 2 of the act enacts new G.S. 14-72.9, which establishes the offense of larceny of law enforcement equipment from a law enforcement vehicle. This new offense is punishable as a Class H

felony, or a Class G felony for equipment valued in excess of \$1,000. The new statute defines “law enforcement equipment” and “law enforcement vehicle,” and requires that the person knows or reasonably should know that the vehicle was a law enforcement vehicle, and the property was law enforcement equipment.

*Expunction update.* Effective for petitions filed on or after December 1, 2021, section 2 of the act also amends G.S. 15A-145.5(c1)(1), as amended by SL 2021-118 (concerning the content of a petition for expunction), by requiring that the petitioner's affidavit that the petitioner is of good moral character also include one of the following statements: (1) if the petition is for the expunction of one or more nonviolent misdemeanors, that the petitioner has not been convicted of any felony or misdemeanor, other than a traffic violation, during the applicable five-year or seven-year waiting period or (2) if the petition is for the expunction of one or up to three nonviolent felonies, that the petitioner has not been convicted of any misdemeanor, other than a traffic violation, in the five years preceding the petition, or any felony during the applicable 10-year or 20-year waiting period.

- 18) [S.L. 2021-180 \(S 105\): Remote forensic testimony.](#)** Effective for criminal proceedings, administrative hearings, and adjudicatory hearings in juvenile court conducted on or after January 1, 2022, section 16.17 of the act enacts new G.S. 15A-1225.3(b1), which provides that a forensic analyst may testify remotely in any criminal hearing or trial in district court if: (1) the State has provided a copy of the analyst's report to the defendant's attorney of record or to the defendant if he or she is unrepresented; and (2) the State notifies the defendant's attorney or the unrepresented defendant at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the testimony regarding the results of forensic testing into evidence using remote testimony in real time. If these procedures are followed, the testimony of each person in the associated chain of custody also may be provided remotely.

The act also enacts new G.S. 20-139.1(c6), which permits a laboratory analyst to testify remotely in a district court proceeding regarding the results of a chemical analysis of blood or urine reported by the analyst if: (1) the State has provided a copy of the analyst's report to the defendant's attorney of record or to the defendant if he or she is unrepresented; and (2) the State has notified the defendant's attorney or the unrepresented defendant at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce remote testimony regarding the chemical analysis. If these procedures are followed, the testimony of each person in the associated chain of custody also may be provided remotely.

Both statutes require that the method used for remote testimony permit the trier of fact and all parties to observe the demeanor of the remote witness in a similar manner as if the witness were testifying in person. The court must ensure that the defendant's attorney or an unrepresented defendant has a full and fair opportunity to examine and cross-examine the witness. For further discussion, see Shea Denning, [Remote Testimony by Lab Analysts Authorized in District Court Prosecutions – Even Without Defendants' Consent](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Dec. 6, 2021).

- 19) [S.L. 2021-182 \(S 183\): Ignition interlock.](#)** This act makes significant changes to the laws that require certain persons convicted of driving while impaired to have ignition interlock installed on their

vehicles. Effective November 18, 2021, those changes include: (1) requiring that ignition interlock be installed only on the vehicle or vehicles the person drives rather than all the vehicles the person owns, (2) changing the alcohol concentration restrictions for ignition interlock from 0.04 and 0.00 to a universal standard of 0.02; and (3) directing a legislative committee to study ignition interlock expansion and related issues. Effective for limited driving privileges issued on or after December 1, 2021, this act also eliminates the 45-day delay for a limited driving privilege to become effective. Effective for limited driving privileges issued and drivers licenses restored on or after June 1, 2022, this act further requires that ignition interlock vendors waive a portion of ignition interlock costs for qualified persons and removes the time and purpose restrictions on a limited driving privilege if a person has ignition interlock. For further discussion, see Shea Denning, [S.L. 2021-182 Amends Ignition Interlock Requirements](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Dec. 13, 2021).

**20) [S.L. 2021-185 \(H 165\): Changes to transportation and motor vehicle laws.](#)** This act makes several changes to North Carolina's transportation and motor vehicle laws, effective November 23, 2021 unless otherwise noted.

Section 8 of this act amends G.S. 20-37.6(c1) to require the Division of Motor Vehicles to offer renewal of handicapped credentials in person and online on the Division's website.

Section 9 of this act adds new G.S. 20-17.4(c2) which provides that a person shall be suspended from driving a commercial motor vehicle for life, without the possibility of reinstatement, if convicted of a major disqualifying offense as defined in 49 C.F.R. 383.51(b)(10) (using a CMV in the commission of a felony involving an act or practice of severe forms of trafficking in persons).

Section 11 of this act amends S.L. 2021-134 to delay the effective date for certain license revocations to February 1, 2022 and applies to notifications of revocations mailed by the Division of Motor Vehicles on or after that date.

Section 12(a) of this act adds new G.S. 20-309.2(a1) which requires the Division of Motor Vehicles to ensure that its records accurately reflect the insurance coverage status of each owner of a motor vehicle registered or required to be registered in this State by reconciling all notices received under this section pertaining to that motor vehicle owner. This section further directs the DMV not to record a termination notice received under the statute as a lapse in financial liability if the DMV has received an earlier notice that establishes the owner has met the requirements for the vehicle through a liability policy that is not the subject of the later termination notice.

Section 12(b) of this act amends G.S. 20-311 to require the DMV to notify the owner by mail or electronically upon receipt of evidence that the owner of a motor vehicle registered or required to be registered does not have financial responsibility for the operation of the vehicle. This section also adds new G.S. 20-311(a)(5) to prohibit the DMV from assessing a penalty against an owner that responds within the time period specified in existing law and establishes the following: (1) the owner sold the vehicle or transferred the title pursuant to State law regarding transfer of title or surrender of title to salvage vehicles within 10 days of the termination of financial responsibility for the vehicle; (2) the owner did not operate or allow the vehicle to be operated during the lapse due to damage or mechanical defect, or non-possession due to sale or transfer for which there was a

delay between the physical transfer and completion of the required paperwork; and (3) the owner has returned the NC registration plate or has submitted an affidavit indicating the plate has been lost, stolen, or destroyed.

Effective for offenses committed on or after December 1, 2021, section 13 of this act amends G.S. 136-89.199, which provides for designating high-occupancy toll and managed lanes, by making a violation of a use requirement or use condition for lanes designated under the statute an infraction. This section also amends G.S. 20-176 to make operation of a motor vehicle in violation of G.S. 20-146.2, regarding use of HOV lanes, an infraction.

Section 14 of this act amends G.S. 20-116 by specifying that the statute does not prevent the operation of passenger buses that are owned and operated by local governments, operated as a single vehicle, and having an overall length of 45 feet or less or as an articulated vehicle and having an overall length of 65 feet or less.

Section 15 of this act enacts new G.S. 20-329 which authorizes a licensed commercial driver training school to administer road tests required for licensure under G.S. 20-11(d)(3) only when certified under by the DMV. The new statute allows a person who passes a road test required for licensure administered by a commercial driver training school to submit proof to the DMV of passage of the road test for the purpose of meeting the requirement of GS 20-11(d)(3) and allows the Commissioner of Motor Vehicles to adopt rules for school certification to administer road tests.

**21) [S.L. 2021-191 \(S 473\)](#): **Misuse of elected office for personal financial gain.** Effective for offenses committed on or after January 1, 2022, section 3 of the act enacts new G.S. 14-234.2 making it a Class H felony for an elected officer of a political subdivision of the State to solicit or receive personal financial gain from his or her position by means of intimidation, undue influence, or misuse of the employees of that political subdivision. The new provision excludes financial gain received for acting in the elected official's official capacity or received with the approval of the elected official's respective governing board.**

Section 4 of the acts enacts new G.S. 14-234.3, making it a Class 1 misdemeanor for a public official to knowingly participate in making or administering a contract, including the award of money in the form of a grant, loan, or other appropriation, with any nonprofit with which that public official is associated. To avoid culpability under this statute, the public official shall record his or her recusal with the clerk to the board, and once recorded, the political subdivision of this State may enter into or administer the contract. This new provision is subject to the exceptions listed in G.S. 14-234(b) and (d1) through (d5). Contracts entered into in violation of the new statute are void but may continue in effect until an alternative can be arranged if: (i) an immediate termination would result in harm to the public health or welfare and (ii) the continuation is approved by the Local Government Commission upon request of the political subdivision.