

2005 LEGISLATION OF INTEREST TO COURT OFFICIALS
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Estates and Special Proceedings

1. **S.L. 2005-38 (H 508). *Resumption of name after divorce.*** Amends GS 50-12 to allow woman whose marriage ends in divorce to resume previously used name (maiden name, name of prior deceased husband, or name of living, prior husband if she has children who have that surname) by applying either in county where she resides or where the divorce is granted. Effective 90 days after May 12, 2005 (August 10).
2. **S.L. 2005-67 (H 1015). *Mediation of matters before clerk of court.*** Adds new GS 7A-38.3B to allow clerk of court to send matters within his or her jurisdiction to mediation, except for matters under GS Chapter 45 (foreclosure) and 48 (adoptions) or matters in which clerk's jurisdiction is ancillary. Authorizes Supreme Court to adopt rules as necessary to supplement statute. Clerk may order that parties, interested persons (e.g., heirs, devisees, next of kin), nonparty participants and fiduciaries, to attend as necessary to insure that mediation is effective. Parties may select mediator, but if no mediator so selected, clerk must appoint one certified by the Dispute Resolution Commission. Confers judicial immunity on mediators. Requires parties, interested persons and/or fiduciaries to pay cost of hiring mediator, subject to waivers for parties unable to pay their share of the costs. Supreme Court rules are to specify how costs are to be paid. If costs assessed against fiduciaries or corpus of trust or estate order entered must contain findings of fact supporting the assessment of costs. Precludes use of testimony about content of negotiations in subsequent proceedings, subject to named exceptions; evidence mentioned in mediations that is otherwise discoverable is not shielded from discovery because it is mentioned in a mediation negotiation. If agreements reached can be resolved only by agreement of parties, settlements must be reduced to writing to be enforceable. If matters require clerk's approval (guardianship and estate matters), settlement is presented to clerk "for consideration in deciding the matter." Allows clerk to sanction person who fails to appear, subject to review by superior court pursuant to statutes regulating appeals from the clerk in GS Ch. 1. Effective May 26, 2005.
3. **S.L. 2005-114 (H 451). *Criminal checks of adults residing in household of prospective adoptive parent.*** Amends GS 48-3-309, which requires criminal history check of prospective adoptive parents, to also require criminal history checks of all persons over 18 years of age residing in the home to determine if they are fit for an adoptive child to reside with them. Effective June 24, 2005.
4. **S.L. 2005-135 (H 1199). *Involuntary commitment petitions by fax.*** Amends GS 122C-261 to allow affiants who are physicians or psychologists to file affidavits under that section by fax, so long as an original paper copy is filed within five days thereafter. Effective June 30 2005.
5. **S.L. 2005-166 (H 532). *Consent to adoption changes.*** Amends GS 48-2-206 to provide that if biological father fails to respond to a notification of prebirth determination of right to consent or if at hearing judge determines that father's

consent is not required, father is not entitled to participate in the adoption proceeding as well as not being entitled to notice of initiation of adoption proceeding filed within three months after the birth. Makes conforming amendment to GS 48-2-401, and authorizes court to waive required notice of filing of adoption petition to spouse of petitioner if that spouse is required to join in the petition and petitioner is requesting waiver of the joinder. Adds GS 48-2-207 to provide that if man who is given notice of adoption proceeding as possible or unknown biological father fails to respond within the time specified in the notice, the court must enter an order that person's consent is not required for adoption; requires court to hold a hearing and determine whether consent is required if man notifies court or intervenes within time that he believes his consent is required; and to provide that if court determines consent is not required, individual's are not entitled to receive notice of, or to participate in, further proceedings in the adoption. If court determines consent is required, the adoption cannot proceed until consent is obtained or the individual's parental rights are terminated. Specifies that a finding of the requirement for consent does not entitle individual to physical custody of the minor if the individual did not have physical custody immediately before the placement of the child with the prospective adoptive parents. Amends GS 48-2-304 to allow petition for adoption to include an attached statement of the circumstances of noncompliance with the Interstate Compact on the Placement of Children if applicable. Effective October 1, 2005 and applies to actions filed on or after that date.

6. **S.L. 2005-178 (H 510). *Reliance on power of attorney.*** (a) Adds new Article 5 to GS Chapter 32A to provide that person who in good faith relies on writing that on its face is duly signed, acknowledged and otherwise appears regular and that purports to grant a power of attorney is protected to the extent of the powers and authority that reasonably appear to be granted in the power of attorney unless the person has actual knowledge that the writing is not a valid power of attorney or the action taken by the attorney in fact is beyond the apparent power or authority granted in the writing. Person dealing with attorney-in-fact may not be held responsible for a breach of fiduciary duty by the attorney-in-fact. (b) Provides that person may request attorney-in-fact to provide affidavit (but is still protected if doesn't ask for affidavit) that at the time of presentation of the power of attorney, the attorney-in-fact did not have actual knowledge of the revocation of the power of attorney or facts that would cause the attorney-in-fact to question the authenticity of the power of attorney. The statute includes sample affidavit. If the power is a durable power of attorney and is exercised after the incapacity of the principal, the affidavit must be prepared so as to be recordable by the register of deeds (in other words, acknowledged). (c) Provides that person who unreasonably refuses to accept a power of attorney is subject to liability for reasonable attorney fees and costs incurred in a proceeding to confirm the validity of the power of attorney; an order of the court requiring acceptance of the power; and any other remedy available under applicable law. However, person is not required to honor attorney-in-fact's authority or conduct business with attorney-in-fact if person is not otherwise required to conduct business with the principal in the same circumstances, to engage in transaction with attorney-in-fact if attorney-in-fact has previously breached an agreement with person, open an account for a principal at request of attorney-in-fact if principal is not currently a customer of the person, or make a loan to the principal at the request of the attorney-in-fact. (d) Authorizes principal, attorney-in-fact, or person presented with a power of attorney to file special proceeding to request determination of validity of power of attorney. If find that there was reasonable cause to refuse to accept the power of attorney and that attorney-in-

fact willfully misrepresented the authenticity or validity of the power of attorney, the attorney-in-fact, not the principal, is liable for reasonable attorneys' fees and costs. (e) Effective October 1, 2005 and applies to all powers of attorney created before, on or after that date.

7. **S.L. 2005-180 (H 804). *Order of payment of claim against estate for equitable distribution.*** Amends GS 28A-19-6 to provide that a claim for equitable distribution is paid as a Seventh Class distribution of a decedent's estate and all other claims become an Eighth Class. Effective July 12, 2005 and applies to estates of persons who died on or after June 12, 2003 (which was effective date of provision that equitable distribution was claim against estate), unless parties have entered into an agreement for division of property before the effective date of this statute.
8. **S.L. 2005-192 (S 679). *Revised Uniform Trust Code.*** Repeals GS Chapter 36A and replaces it with new GS Chapter 36C, NC Uniform Trust Code. Recodifies Article 1 of GS Chapter 36A, Investment and Deposit of Trust Funds, as Article 7 of Chapter 32 and moves specified provisions in current Chapter 36A dealing with banks and trust companies to Chapter 53. This digest mentions only those changes in new trust code that affect court proceedings.

General provisions. Provides terms of trust prevail over provision in Chapter 36C except for periods of limitation for commencing a judicial proceeding; power of court to take any action and exercise jurisdiction; and subject matter jurisdiction of the court and venue. Authorizes any interested person to request the court to approve a nonjudicial settlement agreement, to determine whether the representation was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved. Provides that a judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights. Trustee and beneficiaries are subject to jurisdiction of the courts of NC regarding any matter involving the trust.

Clerk's jurisdiction. Allows proceeding before clerk to be initiated by petition or complaint. Adds to exclusive and original jurisdiction of clerks over trusts, proceedings to convert to or from a unitrust; to transfer a trust's principal place of administration; to require a trustee to provide a bond, set the amount of the bond, reduce or excuse a bond, release or permit substitution of surety; to make orders with respect to a trust for the care of animals; and to make orders with respect to noncharitable trust without an ascertainable beneficiary. Continues provision that clerks have original but not exclusive jurisdiction with respect to proceedings to ascertain beneficiaries, determine questions arising in the administration or distribution of any trust, including questions of construction of instrument, and to determine existence or nonexistence of trust, but provides that clerk, upon motion of party rather than on own motion, may determine that one of these issues be heard originally in superior court. Provides that if person files an action for declaratory relief, either party may move for a transfer of the proceeding to the superior court division, but if not removed, clerk to apply provisions of declaratory judgment statutes to trust proceeding. Specifies that clerk does not have jurisdiction over actions by or against creditors of debtors of a trust, actions involving claims for monetary damages, including claims for breach of fiduciary duty, fraud and negligence, actions to enforce, amend, or reform a charitable trust in addition to actions to reform, terminate or modify a trust. Adds a provision that venue for a

judicial proceeding for the appointment of a trustee for a trust without a trustee is any county in which a beneficiary resides, any county in which trust property is located, in the county specified in the trust, or if the trust is created by will, in the county in which the decedent's estate is administered. Authorizes the clerk to require a trustee a trustee of a charitable trust to account to the clerk under a proceeding brought to enforce the trust.

Applicability of Rules of Civil Procedure. Because the Rules of Civil Procedure do not apply to estate matters before the clerk, sets out the following provisions governing those proceedings: (a) When all parties join as petitioners, clerk may hear and decide the petition summarily. (b) Specifies requirements for pleadings. (c) Authorizes clerk to grant enlargement of time to answer or do any act required by this law or Rules of Civil Procedure, but request must be filed before expiration of period originally prescribed and enlargement cannot exceed 10 days and may only be granted once. Authorizes parties to enter into stipulations enlarging time, not to exceed 30 days. (d) Provides that, unless clerk provides otherwise, Rules of Civil Procedure 5 (service after initial pleading), 6 (counting time and serving motions), 18 (joinder of claims and remedies), 19, 20, 21 (joinder of parties), 24 (intervention) and 45 (subpoenas) apply to trust proceedings. Also provides that, upon motion of party, clerk may direct that the following Rules apply: 15 (amended pleadings), 16 (pre-trial procedure), 17 (parties), 25 (substitution of parties), 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37 (depositions and discovery)

Consolidation into superior court action. Allows superior court judge to consolidate in superior court a trust proceeding before clerk and civil action before superior court if the cases involve a common question of law or fact and sets out procedures for joinder of cases.

Appointing/removing trustee. Provides that whether or not a vacancy exists or is required to be filled, the court may appoint an additional trustee or special fiduciary when the court considers it necessary for the administration of the trust. Specifies following reasons for court to remove a trustee: (a) trustee has committed a serious breach of trust; (b) lack of cooperation among cotrustees substantially impairs the administration of the trust; (c) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal best serves the interest of the beneficiaries; or (d) there has been a substantial change of circumstances, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is consistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available. Pending a decision to remove a trustee or in lieu of or in addition to removal, court may order any of the following relief as is necessary to protect the trust property or the interests of the beneficiaries: compel the trustee to perform the trustee's duties; enjoin the trustee from committing a breach of trust; compel the trustee to redress a breach of trust by paying money, restoring property, or other means; order a trustee to account; appoint a special fiduciary to take possession of the trust property and administer the trust; suspend the trustee, reduce or deny compensation to the trustee; or void an act of the trustee or impose a lien or constructive trust on trust property.

Bond. Provides that trustee must provide bond if (1) trust instrument executed before January 1, 2006 unless the terms of the trust provide otherwise; (2) trust instrument executed on or after January 1, 2006, but only if the terms of the trust instrument

require the trustee to post a bond; (3) a beneficiary requests the trustee to provide a bond and the court finds the request to be reasonable; or (4) the court finds that it is necessary for the trustee to provide a bond in order to protect the interests of beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. However, provides that no bond may be required of a trustee if the governing instrument directs otherwise. Bond amount and provision regarding clerk's ability to excuse the requirement of a bond, reduce the amount, release the surety, or permit the substitution of surety unchanged. Specifies that banks and trust companies licensed to do business in NC need not give bond even if required by the terms of the trust.

Compensation and costs. If terms of trust do not specify compensation, trustee compensated as determined in accordance with Article 6 of GS Chapter 32. Provides that trustee is entitled to be reimbursed out of trust property for expenses properly incurred. Costs must be reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

NC Community Trust for Persons with Severe Chronic Disabilities. Moves Act from Chapter 36A to new Chapter 36D.

Exercise of powers by joint personal representatives. Amends GS 28A-13-6 to delete provision making it applicable to testamentary trusts. Amends estate law to conform provisions for exercise of powers by joint personal representatives to provisions for trustees under new law. Allows joint personal representatives to agree in a writing, filed and approved by the clerk, that one or more of the personal representatives may exercise the following powers: establish and maintain bank accounts for estate and issue checks; maintain inventories, accountings; enter safety deposit box rented by estate; employ persons as advisors or assistants in performance of administrative duties; list estate property for taxes and prepare tax returns; collect and give receipts for claims and debts of the estate; pay debts, claims, costs of administration, and taxes; compromise or settle claim; have custody of the estate property, and perform any function relating to investment of estate assets.

Effective date. Effective January 1, 2006 and applies to all trusts created before, on or after that date; to judicial proceedings concerning trusts commenced on or after that date; and to judicial proceedings commenced before that date unless the court finds that application of a particular provision of Chapter 36C would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of the parties.

9. **S.L. 2005-214 (S 666). *Declaration limits on attorneys' fees in planned community lawsuits.*** Makes GS 47F-3-120, which provides that in an action to enforce provisions of articles of incorporation, the declaration, bylaws, or rules and regulations of a homeowner's association, court may award reasonable attorneys' fees to prevailing party if declaration allows attorneys' fees, apply to planned communities created before January 1, 1999 as well as after that date. (Another provision in statute authorizes attorneys' fees in an action to enforce a lien for unpaid assessments, and that provision has always applied to planned communities created before as well as after January 1, 1999.) Effective July 20, 2005 for actions begun on or after that date.

10. **S.L. 2005-225 (S 533). *Clarify year's allowance for child.*** Amends GS 30-17 to provide that child of deceased parent entitled to \$2,000 year's allowance without subtracting the value of articles consumed by child since parent's death. Effective October 1, 2005 and applies to estates of persons dying on or after that date.
11. **S.L. S.L. 2005-333 (H 1394). *Parents of incompetent adult recommend guardian by will.*** Adds GS 35A-1212.1 providing that parent may recommend by will appointment of a guardian for adult unmarried incompetent child and may specify desired limitations on power of guardian. Provides that recommendation is "strong guide" but not binding if clerk finds that a different appointment is in incompetent's best interest. Allows guardian to qualify without bond if will specifically directs unless clerk finds interest of incompetent would best be served by requiring the guardian to post a bond. Amends GS 35A-1214 to provide that person recommended by parent is first priority for appointment as guardian. Effective August 26, 2005.

Civil

1. **S.L. 2005-123 (S 734). *Satisfaction of deeds of trust.*** Adds GS 45-36.4 to -36.20 to specify new provisions for filing satisfaction of security interest in real property (deeds of trust and mortgages) with the register of deeds. Specifies what documents must include and remedies for failure to file within 30 days after creditor receives full payment of the security interest. Sets out special provisions for trustee's filing satisfaction of deed of trust, with statutory form. Also authorizes person who files a satisfaction of a security instrument in error to file a document of rescission. Upon recording, the document rescinds an erroneously recorded satisfaction and reinstates the security instrument except as to persons who recorded interests described in the security instrument during the period of time after the satisfaction was recorded and before the rescission was recorded. Also authorizes persons to request and receive at no charge a pay off statement at least once every 6 months. Effective October 1, 2005.
2. **S.L. 2005-138 (S 465). *Civil procedure filing requirements.*** Makes technical and clarifying changes to Rule 5 of the Rules of Civil Procedure regarding certification of service and papers that must be filed with the clerk and that may not be filed with the clerk. Provides that certificate must be signed in accordance with and subject to Rule 11 of civil rules. Requires the following documents to be filed with the court: pleadings subsequent to complaint, written motions and notices of hearing, applications to court that may affect rights or command a person to do something, notices of appearances, papers required by law to be filed, papers ordered by court to be filed, or court orders. No other papers may be filed unless all parties agree, papers relate to a motion or request for relief, or some law permits the filing. Briefs and memoranda may be filed only if ordered by the court. Placing responsibility for preserving materials related to deposition on party taking deposition. Makes conforming change to GS 1A-1, Rules 30-32 to delete requirement that clerks give notice of the filing of a deposition. Effective Oct. 1, 2005 and applies to pending actions.
3. **S.L. 2005-146 (H 97). *Terminate parental rights for murder of other parent of child.*** Amends GS 7B-1111 to add as a ground for termination of parental rights that the parent has committed murder or voluntary manslaughter of the other parent of the

child. Requires court to consider whether killing was committed in self-defense or in defense of others, or whether there was substantial evidence of other justification. Applies to termination proceedings begun on or after June 30, 2005.

4. **S.L. 2005-163 (H 514). *Civil motion may be heard in any county within superior court district where action filed.*** Amends GS 1A-1, Rule 7 to provide that a motion in a civil action filed in a superior court district consisting of more than one county may be heard in any county in that district and allows motion to be heard at regular civil or civil priority session or, with consent of the presiding judge, at a regular criminal or criminal priority session of court. Makes conforming change to Rule 58. Effective October 1, 2005 for motions filed on and after that date.
5. **S.L. 2005-167 (S 806). *Dispute Resolution procedures, powers.*** Amends various statutes in GS Ch. 7A dealing with mediated settlement conferences in superior court and family court matters to clarify the provisions making statements made in negotiations inadmissible in the principal action or in other civil actions so that they apply to all persons in the conference, and that proceedings to discipline a mediator or neutral by state bar or other agency or proceedings to enforce abuse laws are not covered by the rules on inadmissibility. Makes clear Commission has authority to regulate all the various mediated settlement programs established by statute. Removes authority of Director of AOC to perform management functions of commission, and replaces it with provision requiring consultation with the director on personnel and budget matters. Adds clerk of court to Commission. Allows Commission to employ special counsel or to use Attorney General to conduct its regulatory responsibilities or on appeal of such matters. Spells out procedures to be used in disciplinary proceedings; in general provides for confidentiality of information during the process until the Commission has conducted an initial proceeding and the mediator or neutral has appealed the decision. Grounds for discipline are violation of standards of conduct, violation of standards for the person's profession, violation of program rules or conduct that is inconsistent with good moral character or reflects a lack of fitness to serve as a mediator or neutral. Appeals of final determinations by Commission are to Wake Superior Court. Provisions on inadmissibility of negotiations effective Oct. 1, 2005. Others effective July 7, 2005.
6. **S.L. 2005-186 (H 923). *Clarifies postseparation support.*** Amends GS 50-16.1A(4) to define "postseparation support" as spousal support to be paid until the earlier of (a) date specified in order for postseparation support, (b) entry of order awarding or denying alimony, (c) dismissal of the alimony claim, (d) entry of judgment of absolute divorce if not claim of alimony pending, or (e) termination of postseparation support by remarriage, cohabitation of dependent spouse or death of either supporting or dependent spouse. Provides that a claim for alimony must be pending if postseparation support is ordered at the time of entry of a judgment for absolute divorce. Effective October 1, 2005, and applies to postseparation support orders issued on or after that date.
7. **S.L. 2005-187 (H 1319) *Amend Family Law Arbitration Act.*** Amends Family Law Arbitration Act, which allows parties to agree to arbitrate issues arising from marital separation or divorce, except for the divorce itself. Adds GS 50-42.1 to provide that party to arbitration agreement may waive or vary requirements of the Act by written agreement except specifies certain statutory provisions that may not be waived at any

time and others that may not be waived before a controversy arises that is subject to arbitration. Sets out procedure for person initiating arbitration proceeding to notify other parties. Modifies various provisions in the statute requiring agreement between the parties to require agreement to be in writing. Requires arbitrator to disclose any facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the proceeding and provides that an arbitrator who does not disclose a material interest in the outcome of the arbitration is presumed to act with partiality, allowing the court to vacate the award. Rewrites provision for consolidation of separate arbitration proceedings to allow court to consolidate on motion of one party under specified circumstances. Limits attorneys' fees in an arbitration award to the extent allowed by law unless the parties otherwise agree in writing. Allows arbitrators to modify or correct an award if they have not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding. Allows court, in its discretion, to order that an arbitration award, order or judgment be sealed to be opened for good cause only upon order of the court. Effective October 1, 2005 and applies to agreements made on or after that date. Applies to agreements to arbitrate made before that date if parties agree.

8. **S.L. 2005-194 (H 1346). *New Interstate Compact for Juveniles.*** Repeals current Interstate Compact on Juveniles (Art. 28 of GS Chapter 7B) and replaces it with new Interstate Compact for Juveniles (Article 40 to GS Chapter 7B) to authorize Governor to execute a Compact with other states governing supervision and return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and who have endangered their own safety and the safety of others. Provides that Secretary of Department of Juvenile Justice and Delinquency Prevention is Compact Administrator and creates NC State Council for Interstate Supervision to advise Administrator. Effective only when 35 states have adopted the new Compact.
9. **S.L. 2005-221 (H 1434). *Rule 4 service by signature confirmation.*** Amends GS 1A-1, Rule 4 to allow service on a natural person by mailing a copy of the summons and complaint by signature confirmation as provided by the United States Postal Service, addressed to the party to be served, and delivering to the addressee. (Signature service is new service provided by post office that allows a letter to be sent priority mail, with signature service, whereby the addressee signs for the letter. It can also be used with first class mailing of a parcel.) Proof of service is by filing an affidavit showing service (copy of complaint and summons deposited in post office for mailing by signature service, it was in fact received as evidenced by attached proof of delivery obtained from post office, and that copy of signature confirmation is attached) together with copy of the proof of delivery provided by US Post Office. Effective October 1, 2005 and applies to actions filed on or after that date.
10. **S.L. 2005-228 (H 1221). *Parenting coordinator in child custody actions.*** Adds Article 5 to GS Chapter 50 authorizing the court to appoint a parenting coordinator in a child custody action under Chapter 50 if the parents consent or if the court makes a specific findings that the action is a high-conflict case, that the appointment of the parenting coordinator is in the best interests of a minor child in the case, and that the parties are able to pay for the cost of a parenting coordinator. High-conflict case is one where the parties demonstrate an ongoing pattern of excessive litigation, anger and distrust, verbal abuse, physical aggression or threats of physical aggression, difficulty communicating about and cooperating in the care of the minor children, or

conditions that in the discretion of the court warrant the appointment of a parenting coordinator. Requires court ordering parenting coordination to specify issues the coordinator is directed to assist the parties in resolving and deciding. The parenting coordinator is selected from list kept by district court. Authorizes parenting coordinator to identify disputed issues, reduce misunderstandings, clarify priorities, explore possibilities for compromise, develop methods of collaboration in parenting, and comply with court's order of custody, visitation, or guardianship. Also allows court to authorize coordinator to decide issues regarding implementation of parenting plan and requires parties to comply with parenting coordinator's decisions until court reviews. Specifies requirements for parenting coordinators, which includes a master's or doctorate degree in psychology, law, social work, counseling, medicine or a related subject area. Requires court to hold an appointment conference for parties, their attorneys, and parenting coordinator at which time judge explains the process, determines information that must be given to parenting coordinator, determines financial arrangements for paying coordinator's fee, and enters the appointment order. Sets out requirements for meetings, fees, reports, records of meetings, modification or termination of parenting coordinator appointment, and immunity for coordinator. Effective October 1, 2005.

11. **S.L. 2005-229 (S 887). *Claim of lien changes.*** Rewrites provisions of Article 2 of Chapter 44A, Statutory Liens on Real Property. Changes terminology for person having lien on real property for work performed on property from "right to a lien" to "right to file a claim of lien on real property" and subcontractor who has a claim of lien upon funds owed to contractor or higher tier subcontractor to "claim of lien upon funds" to clarify between the two. Amends GS 44A-12.1, which prohibits clerk from docketing of lien unless specifically authorized by statute, to provide that a claim of lien on real property or claim of lien on real property with a notice of claim of lien upon funds attached that is filed by an attorney licensed in NC and that is offered under Article 2 of Chapter 44A and appears on its face to contain all of the information required by the statute may not be rejected for indexing, docketing, recording or filing by the clerk. Provides that venue for commencing an action to enforce a claim of lien on real property is where venue is otherwise proper instead of in the county where the lien is filed. Provides that if title to real property on which claim made is vested in a receiver or trustee in bankruptcy the filing of a proof of claim with the receiver or in bankruptcy and the filing of a notice of lis pendens in each county in which real property is located within 180 days of last furnishing of labor or materials satisfies the requirement for commencing the civil action. Amends GS 44A-18 to provide that liens upon funds by subcontractors include interest at the legal rate (8%), and if funds are insufficient to satisfy all claims, claimants recover interest due on pro rata basis. Amends GS 44A-19 to allow notice of claims of lien upon funds to be served in any manner authorized by Rule 4 and provides that notices may not be filed with the clerk and may not be indexed, docketed or recorded in any way as to affect title to any real property, except that notice of claim of lien may be filed with the clerk (a) when notice is attached to a claim of lien on real property or (b) when the notice of claim of lien upon funds is filed by the obligor for the purpose of discharging the claim of lien upon the funds by posting a bond under GS 44A-16. Provides that bond deposited to discharge claim of lien upon funds discharges notice of claim of lien upon funds filed and any notices of claims of liens upon funds served by lower tier subcontractors or claims of lien on real property filed for lower tier subcontractors claiming through or against the contractor or higher tier subcontractor

up to the amount of the bond. Provides for pro rating funds when not sufficient to satisfy all claims.

12. **S.L. 2005-291 (H 1243). *Notice to terminate mobile home space.*** Amends GS 42-14 to lengthen the notice time a landlord or tenant must give to terminate a periodic tenancy at the end of the term from 30 to 60 days before the end of the term that the tenancy is to end. Effective January 1, 2006 for notices to quit given on or after that date.
13. **S.L. 2005-292 (H 1240). *Vacation rental agreements amendments.*** Amends GS 42A-19 to allow owner who has entered into vacation rental agreements and then sells property to give copy of standard vacation rental agreement used to new owner rather than copy of each agreement entered into. Requires grantee to notify tenant of transfer of property within 20 rather than 10 days after transfer but exempts grantee who hires same broker who procured tenant's vacation rental agreement when grantee has agreed in writing to honor those agreements. Makes clarifying change to GS 42A-36 regarding mandatory evacuations. Effective October 1, 2005 for agreements entered into on or after that date.
14. **S.L. 2005-304 (H 1299). *Motor vehicle repair estimates.*** Amends GS 20-354.3 to provide that in determining whether the cost of repair work exceeds \$350 (which is the point at which the repair shop must give a written estimate), cost of repair work consists of the cost of parts and labor, charges for necessary diagnostic work and teardown, taxes, if any, any shop supplies, overhead or any other extra services that are incidental to the repair work. Effective October 1, 2005 for repair estimates made on or after that date.
15. **S.L. 2005-320 (H 801). *Resolve conflicting child custody orders.*** Amends GS 7B-200 to provide that when court obtains jurisdiction over juvenile under an abuse, neglect or dependent petition, any other civil action in which custody is an issue is automatically stayed as to that issue and makes conforming amendment to GS 50-13.1. Provides that if two conflicting custody orders are issued, order in abuse and neglect proceeding prevails. Allows judge hearing abuse and neglect claim to consolidate civil custody action with the juvenile proceeding. Amends GS 7B-201 to provide that when a court's jurisdiction terminates automatically or by court order, the court may not modify or enforce an order previously entered. Provides that legal status of juvenile and custodial rights of parents returns to status they were before juvenile petition was filed unless valid court order in another civil action provides otherwise. However, termination of court's jurisdiction in abuse or neglect proceeding does not affect custody order entered under GS 7B-911, order terminating parental rights, pending action to terminate parental rights, undisciplined or delinquent proceeding, or court's jurisdiction regarding any new abuse, neglect or dependency petition filed. Adds GS 7B-911 setting out procedure and grounds for court at dispositional hearing in abuse and neglect case for court to award custody of a juvenile under GS Chapter 50 and terminate the court's jurisdiction in the juvenile proceeding. Effective October 1, 2005 for juvenile proceedings and civil actions pending or filed on or after that date.
16. **S.L. 2005-332 (S 852). *Access to public record that is trial preparation material.*** Adds GS 132-1.1 to govern request to examine public records that are also trial preparation material. Allows custodian of public record to deny access to public

record that is also trial preparation material and person seeking access to petition for a hearing before the court to challenge denial. Specifies procedure for challenge to denial of access before proceeding begun but document was generated in preparation of trial, during trial proceeding, including appeal and postjudgment proceedings, and post trial or when no proceeding is brought before statute of limitations runs. Effective October 1, 2005.

17. **S.L. 2005-338 (H 1411). *Increase cap for amount qualifying as consumer credit sale.*** Amends G.S. 25A-2, Retail Installment Sales Act, to increase maximum amount financed to qualify as a consumer credit sale from \$25,000 to \$75,000. Effective October 1, 2005 for sales on or after that date.
18. **S.L. 2005-343 (H 1311). *Domestic violence victims get concealed weapon permits.*** Amends GS 14-415.15(b), which allows sheriff to issue a temporary concealed weapon permit in an emergency situation that may constitute a risk of safety to the person, to provide that proof of a domestic violence protective order is evidence of an emergency situation. Amends GS 50B-3 to require clerk to provide an informational sheet developed by the AOC to explain plaintiff's right to apply for a concealed weapon permit when a protective order is issued. Effective for protective orders entered on or after October 1, 2005.
19. **S.L. 2005-353 (H 1318). *Tax consequences considered in determining equitable distribution.*** Amends GS 50-20(c), which provides that court consider tax consequences to parties in determining equitable distribution, to provide that tax consequences include federal and state tax consequences that would have been incurred if the marital and divisible property had been sold or liquidated on the date of valuation. Authorizes court to consider whether tax consequences are reasonably likely to occur in determining the equitable value deemed appropriate for this factor. Effective October 1, 2005 for actions filed on or after that date.
20. **S.L. 2005-356 (H 569). *Create Joint Legislative Committee on Domestic Violence/Other domestic violence studies.*** Creates 16-member Joint Legislative Committee on Domestic Violence, with 8 senators and 8 members of the House, to study and make on-going recommendations on ways to reduce domestic violence. Requires AOC, in consultation with Dep't of Correction, to study programs that use Global Positioning Satellite (GPS) technology to track criminal offenders and make recommendations to General Assembly by July 1, 2006 for a pilot program to use GPS as condition of pretrial release for domestic violence offenses under GS 15A-534.1. Requires Dep't of Correction to report to General Assembly by January 1, 2007 on measures being taken to supervise domestic violence offenders. Requires AOC to expand the Family Court model, as resources allow, and study the elements of the model that can be implemented without additional funds and requires AOC to study the automation of court records to allow queries on civil, criminal, and juvenile matters. AOC to report on both studies to General Assembly by January 1, 2007. Effective September 7, 2005.
21. **S.L. 2005-383 (H 1085). *Defendant using dogs for fighting must deposit funds for dogs' upkeep.*** Adds GS 19A-70 to provide that animal shelter that takes custody of dogs used for fighting may petition court for order that owner of dogs deposit funds in an amount to secure payment of reasonable expenses for caring for dogs pending disposition of criminal charges. Authorizes it to fix charges for 30 days at a time,

with a procedure for extending order for an additional 30-day period. Requires funds to be posted with clerk every 30 days until charges resolved. Allows animal shelter to draw from funds deposited actual costs incurred in caring for dogs. Provides that if funds not deposited within 5 business days of due date, dogs are forfeited by operation of law. Upon adjudication of charges, defendant entitled to refund of any portion of deposit not incurred as expenses and if adjudicated not guilty, person is entitled to a full refund of the deposit (but doesn't indicate who is responsible for providing the funds to refund). Effective December 1, 2005 for offenses committed on or after that date.

- 22. S.L. 2005-389 (H 1375). *Child support enforcement.*** Amends GS 50-13.9 to eliminate clerk of court's responsibility to monitor compliance with child support orders in non-IV-D cases. Authorizes clerk or judge, upon affidavit of an obligee, to issue a show cause order why obligor should not be subject to wage withholding or contempt. Amends GS 49-14 to delete requirement that birth certificate of a child attached to a complaint for civil paternity action be certified. Provisions regarding responsibility to monitor child support effective July 1, 2007. Provision regarding birth certificate effective 90 days after September 13, 2005.
- 23. S.L. 2005-393 (H 1543), *Confidentiality of autopsy photos.*** Adds GS 132-1.8 to provide that a photo or video or audio recording of official autopsy is not a public record. Sets out a procedure (GS 130A-389.1) for access to autopsy photos. Lists certain listed public officials may have access to photos for official use, including chief medical examiner, district attorney, superior court judge, investigating law enforcement officials. Allows personal representative of estate of deceased, physician who uses copy to confer with others with a bona fide professional need to use or understand forensic science; and certain other persons for training purposes after redacting identifying information to have access. Allows person denied access to file a special proceeding before the clerk for access. Clerk may issue an order authorizing the person to have access upon a showing of good cause and may prescribe any restrictions or stipulations that clerk deems appropriate. Specifies that in determining good cause, clerk must consider whether disclosure is necessary for the evaluation of governmental performance; the seriousness of the intrusion into the family's right to privacy and whether the disclosure is the least intrusive means available; and the availability of similar information in other public records. Petitioner must give notice in accordance with Rule 5 of the commencement of a special proceeding to the personal representative of the decedent's estate and any surviving spouse, or if no spouse, decedent's parents. If no living parent, then notice goes to adult child of decedent or guardian of minor child. Specifies that statute doesn't apply to use of autopsy photos in criminal or civil proceeding. Effective December 1, 2005 for disclosures that occur on or after that date.
- 24. S.L. 2005-395 (H 1284). *Disputed escrow monies held by broker deposited with clerk.*** Adds GS 93A-12 authorizing real estate broker who is holding monies, other than security deposits, the ownership of which is in dispute to deposit funds with the clerk of court in the county in which the property for which the monies are being held is located. Requires broker to certify to clerk that the persons who are claiming the money have been notified by first class mail to their last known address that the funds are to be deposited with the clerk and that the persons may initiate a special proceeding to recover the monies. Prohibits broker from depositing funds with clerk until 90 days after notification of persons claiming ownership of the monies. Provides

that upon filing of a special proceeding, clerk to determine rightful ownership of and distribute the monies. Provides that funds escheat to State if no special proceeding filed within one year of depositing of funds with clerk. Effective October 1, 2005.

25. **S.L. 2005-398 (H 1150).** *Expedite outcomes for children and welfare families involved in welfare cases/limit appointment for guardians ad litem.* Makes following changes to Juvenile Code, GS Chapter 7B: Specifies right to and procedure for appeal from finding that reasonable efforts to reunify a family cease. Provides for appointment of provisional counsel for parent when petition filed alleging abuse, neglect or dependency of juvenile and procedure for dismissal or confirmation of appointment at first hearing before district court. Provides for appointment of guardian ad litem under Rule 17 for parent in abuse and neglect case or proceeding to terminate parental rights in addition to counsel if basis to believe parent is incompetent or has diminished capacity; makes parent's communication with guardian ad litem confidential and sets out responsibilities of guardian ad litem. Provides that if adjudicatory, dispositional or other orders for abuse and neglect and adjudicatory hearing order on termination of parental rights are not entered within statutorily required time, clerk for juvenile matters must schedule hearing at first session of juvenile court to explain reason for delay. Provides that person whose parental rights have been terminated is not party to placement review unless appeal of order terminating parental rights is pending and court has stayed the order. Specifies what juvenile matters may be appealed to Court of Appeals and procedure and proper parties for appeal. Effective October 1, 2005 for petitions or actions filed on or after that date.
26. **S.L. 2005-399 (H 661).** *Establish list of persons responsible for abuse or serious neglect of juveniles.* Amends GS 7B-311 to require Dep't of Health and Human Services to maintain a list of individuals identified by the county director of social services as responsible for rendering a juvenile abused or seriously neglected (called responsible individual). Authorizes Dep't to provide information from list to various institutions that provide child care or placement services. Requires Social Services Comm'n to adopt a rule defining "serious neglect." Makes it a Class 3 misdemeanor to release information from list to unauthorized recipient or for authorized person to receive information or attempt to access that information. Enacts new Article 3A of GS Chapter 7B that requires local director of social services to notify individual; allows person designated as responsible individual to request dep't of social services expunge name from the list; sets out procedure for reviewing request by DSS; provides an appeal to a denial for district attorney to review expunction request; and sets out procedure for filing petition for expunction in the district court of the county in which the abuse or serious neglect report arose. Requires clerk to maintain separate docket for expunction actions and upon filing of a petition to calendar the matter for a hearing at next session of juvenile court. Prohibits person designated as a responsible individual from challenging placement of name on list under certain specified conditions. Effective October 1, 2005 for investigative responses initiated by county DSS on or after that date.
27. **S.L. 2005-401 (H 1176).** *Increase amount of property exemptions from judgments.* Amends GS 1C-1601 to increase the amount of exemptions in debtor's property as follows:

- In residence, from \$10,000 to \$18,500 and to provide that unmarried debtor who is at least 65 years of age is entitled to \$37,000 if property previously owned by debtor as tenant by the entirety and former spouse is deceased.
- In any property (wild card) from \$3,500 to \$5,000 to extent of unused exemption amount under residence exemption. (Exemption used to be “less any amount of exemption used.”)
- In one motor vehicle, from \$1,500 to \$3,000.
- In household furnishings, from \$3,500 to \$5,000, plus \$1,000 for each dependent not to exceed \$4,000 for dependents.
- From \$750 to \$2,000 for tools of the trade.
- Clarifies exemption for individual retirement accounts plans, to specify that includes IRAs, Roth accounts, and individual retirement annuities.

Adds provision that following funds are also exempt: funds up to \$25,000 in college savings plan qualified under section 529 of Internal Revenue Code; retirement benefits under retirement plans of states other than NC to extent that the benefits are exempt under the laws of those states (NC retirement funds are not subject to execution under NC law); alimony, support, and child support payments or funds that have been received or to which debtor is entitled to the extent they are reasonably necessary for support of the debtor or debtor’s dependent. Modifies GS 1C-1601(c) regarding waiver of constitutional exemptions to conform to the decision of *Household Finance v. Ellis*, 107 N.C. App. 262, aff’d per curiam, 333 N.C. 785 (1993). Amends GS 1C-1603 to specify that notice of rights served on debtor must be accompanied by motion for exemptions form and conforms statutory forms to new amounts and to give notice that there may be other state and federal exemptions to which the debtor is entitled.

Effective January 1, 2006 for judgments or bankruptcy petitions filed on or after that date.

28. S.L. 2005-411 (S 290). *Uniform Transfer on Death Security Registration Act.*

Creates new Article 4 of GS Chapter 41 allowing owners of securities to execute registration in beneficiary form that transfers listed securities to beneficiary on death of owner (Transfer on death (TOD) securities). Designation of TOD has no effect on ownership of securities during life of owner. Provides that registering entity is discharged from claims of estate, creditors, or heirs, if, in good faith registers a transfer after the death of the owner in accordance with the form when has not received a written objection to implementation of registration in beneficiary form. Securities don’t pass through estate but amends GS 28A-15-10 to add interest in securities passing under the act to be acquired by personal representative when needed to satisfy claims against the estate. Effective October 1, 2005.

29. S.L. 2005-414 (S1048). *Identity theft.* Enacts GS 132-8.1(d)-(h) prohibiting person preparing or filing document to be recorded or filed in the official records of the court from including a person’s social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number or personal identification (PIN) code or passwords in that document unless otherwise expressly required by law or court order or redacted. ?????? Grants person right to request in writing that clerk of court remove from official records placed on court’s Internet Web site available to general public any of this information. Provides that request to remove information is a public record but is available only to clerk’s staff or on order of the court. Specifies that clerk has no duty beyond written request to verify identity of person requesting redaction and no duty

to remove the redaction for any reason upon subsequent request by the individual whose information it is or court order, if impossible to do so. Requires clerk to post signs conspicuously throughout the office and on any Internet Web site available to the public informing the public of the right to redaction. Statute specifies language for notice. Provides that clerk is not liable for claims and damages that might result from information being posted in public site. Effective December 1, 2005.

30. S.L. 2005-420 (S 911). *Distribution of unpaid residuals in class action litigation.*

Adds GS 1-267.10 to provide that before entry of judgment or order approving settlement in a class action court must determine total amount that will be payable to all class members if all class members are paid the amount to which they are entitled under the settlement or judgment. Requires court to set a date when parties report to the court the amount actually paid to class members and court, unless it orders otherwise, shall direct the defendant to pay the sum of the unpaid residue to be divided equally, to the Indigent Person's Attorney Fund and NC State Bar for providing civil legal services for indigents. Effective October 1, 2005 for causes of action that arise on or after that date.

31. S.L. 2005-423 (S 1029). *Domestic violence/landlord-tenant/small claims procedure changes.*

Domestic violence. Amends GS 50B-3 to provide that ex parte or regular domestic violence protective order restraining defendant from further acts of domestic violence must be entered if court finds that an act of domestic violence has occurred and court may give any relief listed in statute. Eliminates requirement that relief must be necessary to bring about a cessation of violence. If protective order requires defendant to stay away from child's school, the sheriff must promptly deliver a copy of the order to the principal of the school. Amends provisions regarding return of firearms to defendant to prohibit return if defendant has any pending criminal charges in either state or federal court against the person that is the subject of the protective order that has expired. Amends GS 50-13.1 to provide that mandatory mediation for child custody may be waived upon showing of domestic violence between the parents.

Adds provisions to landlord-tenant law to prohibit landlord from terminating a tenancy or failing to renew a tenancy or otherwise retaliate in the rental of a dwelling based substantially on (a) tenant's or household member's status as a victim of domestic violence, sexual assault, or stalking. Provides that if perpetrator of domestic violence is not a tenant in same unit, tenant who is victim may give notice to landlord that victim of domestic violence, sexual assault or stalking and request that locks be changed. Requires landlord to change locks or give tenant permission to change locks within 48 hours. If perpetrator is a tenant in same unit as victim, victim (tenant or household member) may require that locks be changed and landlord must change locks if tenant shows copy of court order directing the perpetrator to stay away from dwelling unit. Provides that landlord has no duty to provide key to perpetrator or provide perpetrator access to personal property within the dwelling. Perpetrator still liable under lease for rent and damages to the dwelling unit. Provides that tenant bears cost of changing locks and if landlord fails to change locks or give permission within 72 hours, tenant can change locks but must give a new key to landlord within 48 hours of locks being changed.

Adds GS 42-45.1 to allow victim of domestic violence, sexual assault, or stalking to terminate a rental agreement for a dwelling unit by giving written notice effective at least 30 days after notice. Requires tenant, with notice, to give landlord copy of

domestic violence protective order or order under Chapter 50C, criminal order that restrains person from contact with a protected tenant, or an address confidentiality program card. Tenant isn't liable for rent past the termination date, but if other tenants in dwelling unit, they remain subject to the lease. Prohibits waiver of this provision.

Small claims procedure. Amends GS 7A-219 to provide that failure by a defendant to file a counterclaim in a small claims action or appeal a judgment to district court does not bar a separate lawsuit to assert any counterclaim defendant might have.

Landlord-tenant changes. Amends GS 42-30 to provide that if the defendant fails to appear on the day of court and the plaintiff requests in open court a judgment for possession based on the filed pleadings where the pleadings allege defendant's failure to pay rent as a breach of the lease for which reentry is allowed and the defendant has not filed an answer, the magistrate shall give judgment for possession. Amends GS 42-34 to clarify that to stay execution of a judgment for possession on appeal, defendant must pay into court tenant's share of rent and to provide that in determining amount of rent in arrears that must be deposited, magistrate's determination must be based on available evidence presented or amount listed on face of complaint. Provides that if party seeks modification of bond to stay execution, clerk must hold hearing within 10 days of filing of motion.

Effective date. Changes to GS 50B-3 effective October 1, 2005 for domestic violence protective orders entered on or after that date. Changes regarding landlord tenant law and victims of domestic violence effective October 1, 2005 for leases entered into or renewed on or after that date. Other provisions effective October 12, 2005.

32. **S.L. 2005-425 (H 650). *Business court modifications/effective date of district court judge terms of office.*** Amends GS 7A-453 to allow chief justice to designate one or more special superior court judges to hear complex business cases. (At this time the Chief Justice has appointed Judge Jolly to sit as a business court judge in Raleigh and Judge Diaz to sit in Charlotte, along with Judge Tennille who has been sitting in Greensboro as the only business court judge.) Amends GS 7A-305 to increase the General Court of Justice fee for a civil case assigned to the business court from \$69 to \$269. The initial \$69 is paid at the time of the filing of the case and the additional \$200 is paid upon assignment to business court. Adds GS 7A-45.4 to define mandatory complex business case that must be assigned to business court and specify how cases are designated as business court cases. Effective January 1, 2006. Assignment applies to cases filed on or after that date and the increased fee applies to fees assessed or collected on or after that date.

Amends GS 7A-140 and 163-1 to provide that the terms of office as district court judge begin on January next following the election rather than on the first Monday in December. Applies to judges elected in 2006 and thereafter and provides for holdover until successor's terms begin for judges in office on first Monday in December of 2006 or 2008.

33. **S.L. 2005-445 (S 1117). *Early termination of residential lease by military personnel.*** Amends GS 42-45 to allow any member of the US Armed Forces who is deployed with a military unit for at least 90 days to terminate a rental agreement for a dwelling unit by giving written notice to the landlord. A copy of official orders or written verification signed by the member's commanding officer must accompany the notice of termination. Provides that the termination is effective the sooner of 30

days after the first date on which the next rental payment is due or 45 days after the landlord's receipt of the notice. Effective Sept 28, 2005 and applicable to rental agreements entered into or renewed on or after that date.

Criminal

- 1. S.L. 2005-62 (H 772). *Computer-assisted remote hunting.*** Adds new GS 113-292.1A to prohibit the operation of a facility in NC that allows people to engage in computer-assisted remote hunting (use of computers and other devices to control the aiming and discharging of weapons to shoot animals or birds by people who are not physically present). Also makes it a crime to engage in such hunting, if the prey being hunted is located in NC. Violation is Class 1 misdemeanor and results in hunting license revocation for two years. Effective December 1, 2005 for offenses committed on and after that date.
- 2. S.L. 2005-94 (H 862). *Crime of removing electronic dog collar applies statewide.*** Amends GS 14-401.17, which makes it a misdemeanor to remove an electronic collar from a dog, to make it apply statewide. Effective December 1, 2005 for offenses committed on and after that date.
- 3. S.L. 2005-101 (S 507). *Injury to social worker/aggravating factor.*** Amends GS15A-1340.16(d)(6) (structured sentencing act) to add social workers to list of public officials included in the aggravating factor that offense was committed against or proximately causes serious injury to a covered official. Effective December 1, 2005 for offenses committed on and after that date.
- 4. S.L. 2005-121 (S 472). *Soliciting a person believed to be a child by computer.*** Amends GS 14-202.3 to make offense of solicitation of child applicable to persons who solicit people they believe to be a child under 16 and at least three years younger, even if person solicited is an adult. Makes the offense a Class H felony. Provides that consent is not a defense. Amends GS 14-208.6 to make this offense a sexually violent offense, which requires reporting under the sex offender registry. Amends GS 114-15 to authorize the SBI to investigate crimes involving children and pornography, sexual exploitation of minors and soliciting children by computer; Governor or Attorney General must make request. Effective December 1, 2005 for offenses occurring on and after that date.
- 5. S.L. 2005-130 (H 1209). *Sexual battery collateral consequences.*** Adds sexual battery to list of statutes for which DNA sample is required to be taken and for which sex offender registration is required. Effective December 1, 2005 for offenses committed on or after that date.
- 6. S.L. 2005-137 (H 821). *Speed checking devices.*** Amends GS 8-50.2 to include laser devices used to measure speed of vehicles in kind of instruments covered by that statute, and specifies credentials people must have to do testing of instruments. Effective October 1, 2005.
- 7. S.L. 2005-145 (H 822). *Conform state law to Blakely decision.*** Amends NC sentencing law so that it conforms to the decision of the United States Supreme Court in *Blakely w. Washington*. Amends GS 15A-1340.16 to provide that the State's burden in proving aggravating factors is beyond a reasonable doubt instead of

preponderance of the evidence and to provide that if defendant does not admit to the existence of an aggravating factor, a jury must determine if an aggravating factor is present. The jury impaneled for the trial of the felony, in the same trial, may determine if aggravating factors are present unless the court determines that the interests of justice require a separate sentencing proceeding. Provides that a separate proceeding must be conducted before the trial jury and authorizes an alternate juror to replace a trial juror who becomes unavailable before the trial jury begins its deliberations on whether aggravating factors exist. Allows impaneling of a new jury if the trial jury is unable to reconvene. Provides that if defendant admits aggravating factor but pleads not guilty to underlying felony, evidence that relates solely to the establishment of an aggravating factor may not be admitted in felony trial and if defendant pleads guilty to felony but contests aggravating factor, jury must be impaneled to determine existence of aggravating factor. Specifies that aggravating factors listed in GS 15A-1340.16 need not be included in an indictment or other charging instrument, except the catchall "other aggravating factor reasonably related to the purposes of sentencing," which must be included. If the State seeks to establish the existence of a prior record level point (under GS 15A-1340.14(b)(7)) the jury must make that determination, but the State does not have to allege that it intends to establish the point in the indictment. Provides that court, not jury, to determine existence of aggravating factor that defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D or E felony. Requires State to give defendant written notice of intent to prove aggravating factors or prior record level points at least 30 days before trial or entry of a guilty or no contest plea. If jury finds factors in aggravation, court must ensure those findings are entered in court's determination of sentencing factors form. Adds GS 15A-1022.1 setting out procedure for accepting admissions of the existence of aggravating factors. If defendant admits to aggravating factors, in addition to normal requirements for accepting plea, court must advise defendant that he is entitled to have a jury determine the existence of any aggravating factors or prior record level points and he has the right to prove existence of mitigating factors at a sentencing hearing before a judge. Court also must determine that there is a factual basis for the admission and that the admission is the result of an informed choice by the defendant. Effective for offenses committed on or after June 30, 2005.

8. **S.L. 2005-148 (S 689). *Copies of files for indigent's attorneys.*** Amends GS 7A-452 to provide that in cases in which indigent person has entered notice of appeal and appellate counsel has been appointed, clerk must make copy of complete file in the case, including documentary evidence, if requested, and provide those to the appointed attorney. Effective July 5, 2005.
9. **S.L. 2005-152 (H 355). *Red/blue lights on vehicles.*** Amends GS 20-130.1 to include among red and blue lights that are illegal to use in a vehicle a red or blue that that faces forward and is installed after the initial manufacture of the vehicle. Effective December 1, 2005 for offenses committed on and after that date.
10. **S.L. 2005-156 (H 740). *Transit operators drug testing.*** Amends commercial drivers license law to require employers to notify DMV when an employee subject to federal drug testing rules for transit operators tests positive for drugs. Adds GS 20-17.4 to disqualify commercial driver from driving commercial vehicle until person proves that he or she has been assessed and treated. Adds GS 20-37-20A to allow DMV to make a notation on driver's record. Adds GS 20-37.20B to allow appeal to DMV of

disqualification under procedures specified in GS 20-19(c6) (on the record). Effective Dec. 1, 2005.

- 11. S.L. 2005-161 (H 702). *Raise minimum age to operate personal watercraft.*** Amends GS 75A-13.3 to raise from age 12 to age 14 the minimum age at which a person may operate a personal watercraft if accompanied by a person of at least 18 years of age. Effective November 1, 2005 but doesn't apply to persons who are 12 years of age or older before November 1, 2005.
- 12. S.L. 2005-164 (H 1430). *Obstructing boat dock.*** Amends GS 113-135.1 to provide that person parking vehicle in violation of rule regulating parking of vehicles at boating access is responsible for an infraction and subject to a \$50 fine, and amends GS 113-264 to allow wildlife officer or law enforcement officer to have vehicle towed if parked in area other than one designated for parking or left for a purpose other than launching, operating or retrieving a vessel. Effective December 1, 2005 and applies to offenses committed on or after that date.
- 13. S.L. 2005-182 (H 1392). *Felony failure to return hired property.*** Amends GS 14-167 to make it a Class H felony to fail to return hired property if the property is a motor vehicle with a fair market value of more than \$4,000 at the time of the rental. Adds GS 14-168.5 to make it prima facie evidence of intent to commit the crime of failure to return hired motor vehicle worth more than \$4,000, hiring such a vehicle with the intent to defraud, or conversion of such a vehicle by a bailee or lessee if there is a written lease of the motor vehicle, and the defendant (a) has failed or refused to return the vehicle at the place specified after the lease or bailment has expired, within 72 hours after a written demand is made or (b) presented false or fictitious, or knowingly not current identification to the lessor when leasing the vehicle. Demand for the vehicle must be made by personal service in accordance with Rule 4(j) of the Rules of Civil Procedure, by certified mail, return receipt requested, addressed to the last known address provided in the lease or bailment agreement, or by depositing the demand with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) addressed to the last known address provided in the lease or bailment agreement. Adds GS 20-102.2 to require law enforcement officer receiving a vehicle theft report that rental vehicle has not been returned to enter in National Crime Information Center (NCIC) and report the recovery to NCIC and the reporting party. Effective December 1, 2005 for offenses committed on or after that date.
- 14. S.L. 2005-184 (S 1058) *Assault on assistance animal.*** Amends GS 14-163.1, assault on a law enforcement agency animal or assistance animal, to delete the requirement that the harm to the animal must be physical harm and to define harm to include behavioral impairment that impedes or interferes with duties performed by the animal. Adds to definition of "serious harm" (which raises offense to felony) harm that requires retraining of the animal or that requires retirement of the animal from performing duties. Requires judge to order defendant convicted of assaulting one of these animals to make restitution for specified expenses. Effective December 1, 2005 for offenses committed on or after that date.
- 15. S.L. 2005-189 (H 288). *Driver move over when approaching emergency vehicle changes.*** Amends GS 20-157(a), which requires vehicles to move to right-hand edge of the street upon approach of a police, fire department or rescue squad vehicle

giving a warning signal, to make it apply to all law enforcement vehicles. Amends GS 20-157(f), which requires driver of car to move into lane of multiple lane road that is not lane nearest to parked emergency vehicle or slow down and be prepared to stop when approaching an emergency vehicle parked or standing within 12 feet of the roadway and giving a warning signal by appropriate light, to make it apply to any public service vehicle. Defines "public service vehicle" as vehicle that has been called to the scene by a motorist or a law enforcement officer, is being used to assist motorists or law enforcement officers with wrecked or disabled vehicles, and is operating an amber-colored flashing light. Makes failure to move over when approaching a stopped emergency vehicle an infraction punishable by a fine of \$250. However, provides that any violation that causes damages in excess of \$500 to property in the immediate vicinity of the authorized emergency vehicle or causes injury to a law enforcement officer, a firefighter, an emergency vehicle operator or other emergency response person is punishable as a Class 1 misdemeanor. Violation that causes serious injury or death to any of these officials is a Class I felony, license revocation for up to six months; judge may issue limited privilege in such revocations. Effective July 1, 2006 and applies to offenses committed on or after that date.

16. S.L. 2005-204 (H 1400). *Increase penalty for passing stopped school bus.* Amends GS 20-217 to increase punishment for passing a stopped school bus from a Class 2 to a Class 1 misdemeanor, and makes it a Class I felony to pass a stopped school bus and strike any person causing serious bodily injury. Effective September 1, 2005 and applies to offenses committed on or after that date.

17. S.L. 2005-208 (S 532). *Aggravate penalty for larceny of goods from construction site.* Adds GS 14-72.6 to make it a Class I felony when commits larceny from a permitted construction site; possessing or receiving stolen goods, with actual knowledge or having reasonable grounds to believe that the goods were stolen from a permitted construction site and the goods are valued at more than \$300 but less than \$1,000. Effective December 1, 2005 and applies to offenses committed on or after that date.

18. S.L. 2005-207 (S 748). *Amend procedure for electronic surveillance order.* Amends GS 15A-293 to provide that order authorizing the interception of wire, oral or electronic communication begins on the earlier of the day on which the investigative officer first begins to conduct an interception under the order or 10 days after the order is entered. If intercepted communication is in a code or foreign language the requirement to minimize the interception may be accomplished as soon as practicable after the interception. Authorizes State or federal government personnel or individual operating under contract with State or federal government acting under the supervision of an investigative officer authorized to conduct the interception. Amends GS 15A-294 to provide that requirements to specify facilities or place from which or where communication is to be intercepted do not apply if (a) in an oral communication the application is by a State investigative officer and is approved by the Attorney General; the application contains a full and complete statement as to why specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and the judicial review panel finds that the specification is not practical or (b) with respect to a wire or electronic communication, the application is by the same persons as listed above; the application identifies the person believed to be committing the offense and whose

communications are to be intercepted, and the applicant makes a showing that the person's actions could have the effect of thwarting interception from a specified facility; the judicial review panel finds that the showing has been adequately made; and the order authorizing the interception is limited to such time as is reasonable to presume that person identified was reasonably proximate to the instrument through which the communication will be transmitted. Specifies that time frame within which electronic surveillance in an undisclosed location begins as when place where communication is to be intercepted is ascertained. Effective December 1, 2005.

- 19. S.L. 2004-226 (S 776). *Indecent exposure to persons of same sex/felony indecent exposure.*** Amends GS 14-190.9 to provide that the crime of indecent exposure applies to exposing one's private parts in a public place and in the presence of any other person, not just persons of the opposite sex, except in places designated for a public purpose where the same sex exposure is incidental to a permitted activity. Makes it a Class H felony for person at least 18 years of age to expose himself or herself in the presence of someone less than 16 years of age and makes such offense a lesser included offense of indecent liberties. Requires sex offender registration upon conviction of felonious indecent exposure. Effective December 1, 2005 and applies to offenses committed on or after that date.
- 20. S.L. 2005-231 (S 527). *Campus Police Act.*** Adds new Chapter 74G, Campus Police Act, to authorize Attorney General to certify a private, nonprofit institution of higher education as campus police agency and to allow public educational institutions operating under GS 116-15 to apply to be certified as campus police agency if they wish. Requires campus police officers to meet and maintain same minimum pre-employment and in-service standards as are required for State law enforcement officers. Grants officers, while in performance of duties of employment, same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on real property owned or in the possession and control of the employing institution, or on any portion of a public road passing through the real property of the institution or immediately adjoining it, and grants authority to make arrests on any other property while in the continuous and immediate pursuit of person for offense committed on the real property of the institution or public road through or adjoining the campus. Authorizes campus police to carry concealed weapons if authorized by their campus police agency and the sheriff of the county. Amends GS 14-33(c) to make it a Class A1 misdemeanor to assault a campus police officer. Provides that certificates issued to police agencies and commissions to officers at private institutions under Chapter 74E, campus police, automatically convert to certification and commissions on effective date of act, but boards of trustees of institutions that have a campus police agency may elect to continue to have its officers certified under that Chapter by making written request to the Attorney General no later than October 1, 2005. Effective July 28, 2005.
- 21. S.L. 2005-232 (S 109). *Deployed military concealed handgun permit extended.*** Adds GS 14-415.16A to provide that deployed military personnel whose concealed gun permits expire during deployment may apply for extension of permit and sheriff must grant extension for a period to end 90 days after deployment upon proof of deployment. Even if deployed military member does not apply for extension, concealed weapon permit remains valid until 90 days after the end of the deployment. A military person who is carrying a handgun after returning from deployment but

before renewing the concealed weapon permit must have proof of deployment to display to a law enforcement officer. Modifies GS 14-269, carrying concealed handgun, to conform to changes. Effective July 28, 2005.

22. **S.L. 2005-235 (S 972). *Breaking into place of religious worship.*** Adds GS 14-54.1 to make it a Class G felony to break or enter a building that is a place of religious worship with the intent to commit a felony or larceny therein. “Building that is a place of worship” includes any church, chapel, meetinghouse, synagogue, temple, longhouse, or mosque, or other building that is regularly used and clearly identifiable as a place for religious worship. Effective December 1, 2005 for offenses committed on or after that date.
23. **S.L. 2005-250 (S 592). *Technical revisions to indigent defense services.*** Modifies GS 7A-455.1 to provide that the \$50 fee for appointment of counsel for indigent criminal defendants is not due unless the person is convicted, thereby conforming the statute to the ruling in *State v. Webb*, 358 N.C. 92 (2004). Amends GS 15A-1343(e) to provide that probationer must pay costs associated with counsel employed by or under contract with Office of Indigent Defense Services as well as appointed counsel or public defender. Amends GS 35A-1245(c) to provide that an attorney who is appointed to represent ward when guardian is seeking sterilization is appointed under rules adopted by Indigent Defense Services. Effective August 4, 2005.
24. **S.L. 2005-254 (S 594). *Recoupment for legal services provides to indigent persons.*** Amends GS 7A-455 to provide that no order for partial payment and no judgment may be entered for the value of legal services for indigent defendants rendered to perfect an appeal or postconviction proceedings may be charged if all of the matters raised in the proceedings are vacated, reversed, or remanded for a new trial or sentencing. Clarifies GS 7B-603 provisions authorizing court to require parent to reimburse State for court-appointed fees when guardian ad litem is appointed for child or counsel is appointed for parent in an abuse or neglect case or parental termination of rights case and provides that if parent does not comply with order at the time of disposition, court shall file a judgment for the amount due. Amends GS 7A-450.3 to require judgment against parent or guardian for appointed counsel for minor to be entered at the time of disposition rather than 90 days after the order. Amendments regarding appeal and postconviction proceedings effective August 5, 2005 and other provisions effective October 1, 2005 for appointment of counsel on or after that date.
25. **S.L. 2005-272 (H 1466) *Exploitation of elder or disabled adult.*** Repeals GS 14-32.3 and replaces it with new GS 14-112.2 making it a crime for a person who stands in a position of trust with or has a business relationship with an elder adult or disabled adult to knowingly, by deception or intimidation, obtain or use, or attempt to obtain or use, the adult’s funds, assets, or property with the intent to temporarily or permanently deprive the adult of the use, benefit, or possession of the funds, assets or property or with the intent to benefit someone other than the elder or disabled adult. Makes it a crime for a person who knows or reasonably should know that an elder adult or disabled adult lacks capacity to consent, to obtain, use, or attempt to obtain or use the adult’s funds, assets, or property or conspire with another to obtain those funds, with the intent to temporarily or permanently deprive the adult of the use, benefit, or possession of the funds, assets or property or with the intent to benefit someone other than the elder or disabled adult. Makes violations punishable from a

Class I to Class F felony depending on which crime is committed and the amount of assets involved in the exploitation. Effective December 1, 2005 for offenses committed on or after that date.

26. S.L. 2005-276 (S 622). *Budget substantive criminal changes.*

Drug treatment fund limits. Specifies that funds for drug treatment court must be used to provide treatment and case coordination for offenders sentenced to intermediate punishment or for persons sentenced to community punishment who are at risk of being revoked.

Prisoner Legal Services transfer. Amends GS 7A-498.3 to give Office of Indigent Defense Services authority over state program to provide legal assistance to inmates and provide funds to do that by shifting funds now provided by Dep't of Correction to Prisoner Legal Services, Inc. to Office, effective Oct. 1, 2005. *IDS rates must be followed.* Amends GS 7A-458 to provide that rates for compensating attorneys for indigent persons may not be set at rates higher than those established by rules adopted by IDS without approval from that Office.

County reimbursements for jailed prisoners. Sets fee paid by state to counties for holding prisoners awaiting transfer to state correctional system at \$40 per day.

Extend limits of confinement. Amends GS 184-4 to authorize Sec'y of Correction to allow person confined by law in prison to serve sentence outside of prison, unaccompanied by correctional agent, if the person is terminally ill or permanently and totally disabled and no longer poses a significant public safety risk; condition must have been unknown at time of sentencing and in case of terminal illness must be likely to produce death within six months. Upon being notified by medical staff that inmate meets the criteria, Sec'y must make good faith effort to reach decision within 30 days.

Global Positioning Systems report. Directs Dep't of Correction to report to legislature on its pilot program using global positioning technology to monitor sex and domestic violence offenders.

Criminal Justice Partnership program funding. Expresses legislative intent to avoid funding case manager positions if they can be funded by either TASC or DOC's Community Corrections Division. Amends GS 143B-273.14 (c) prohibit county from spending more than 25% of its partnership funds on pretrial programs, and effective July 1, 2006 amends GS 143B-273.4 to eliminate service of offender in pretrial detention as part of target audience for partnership funded programs.

Parole reports. Directs Post-Release Supervision and Parole Commission to report on inmates eligible for parole and number actually paroled, as well as comparison of the amount of time served by Structured Sentencing inmates compared to amount of time being served by non-Structured Sentencing inmates. Directs Comm'n to make good faith effort to enroll at least 20% of parole eligible inmates in Mutual Agreement Parole Program by May 1, 2006. Directs Comm'n to consider whether inmate has served more time without being paroled than he or she would have served under Structured Sentencing, using as maximum the highest presumptive sentence in the most serious prior record level, and if parole-eligible person has served more time than would be required under Structured Sentencing, directs Comm'n to reinstitute parole review process for that inmate.

Probation treatment monitoring costs. Amends GS 15A-1343(b) to provide that defendant shall not pay costs associated with substance abuse monitoring in lieu of or prior to payments required by that section.

27. **S.L. 2005-277 (H 392) *Beer definition.*** Amends GS 18b-101(9) to increase maximum amount of alcohol allowed in “malt beverage” from 6% by volume to 15% by volume. Effective August 13, 2005.
28. **SL 2005-282 (S 189). *All-terrain vehicles regulations.*** Adds new Part 10C to Article 3 of GS Ch. 20 to regulate off-road driving of all-terrain vehicle use. Prohibits use of vehicles by children under 8, and allows children under 12 and under 16 to operate specially sized vehicles, and drivers over 16 but under 18 to drive regular vehicles if supervised by person over 18. Prohibits operation of vehicles on streets or highways. Prohibits operation of vehicles while under the influence of impairing substance, or recklessly, or without lighted headlights at same times they are required for on-road vehicles. Exempts persons owning vehicles purchased before August 15, 2005 from age requirements. Requires brakes, muffler, and spark arrester. Violation is infraction punishable by \$200 maximum penalty. Effective Jan. 1, 2006 requires operator born after 1990 to have safety class certificate to operate vehicle. Effective Dec. 1, 2005 for offenses created on or after that date.
29. **SL 2005-287 (H 287). *Disposition of seized weapons.*** Amends G.S. 15-11.1(b1) and G.S. 14-269.1 to permit court to authorize the trade, exchange, or sale of a seized firearm to a federally licensed firearms dealer, in addition to the option of allowing the firearm to be retained for the law enforcement agency’s use. Adds new G.S. 15-11.2 to provide for the disposition of an unclaimed firearm that was not confiscated or seized as trial evidence; specifies notice procedures and priority for dispositions (owner, then person turning in weapon, then law enforcement agencies). Effective August 22, 2005.
30. **SL 2005-288 (H 926). *Fail to report dead body.*** Adds new G.S. 14-401.22 to make it a Class I felony when a person, with the intent to conceal the death of another person, fails to notify a law enforcement authority of the death or secretly buries or otherwise secretly disposes of a dead human body. Effective Dec. 1, 2005 for offenses committed on and after that date.
31. **S.L 2005-295 (H 1436). *Domestic violence order/aggravating factor study.*** Directs Sentencing and Policy Advisory Commission to examine the question of whether capital sentencing law should include as an aggravating factor that the capital felony was committed at a time when the defendant knew the behavior was prohibited by a valid protective order entered pursuant to Chapter 50B of the General Statutes of North Carolina, or by a valid protective order entered by the courts of another state or the courts of an Indian tribe. Report due to the 2006 legislative session.
32. **SL 2005-301 (H 687). *Pirating copies of motion pictures.*** Adds new G.S. 14-440.1 to make it a Class 1 misdemeanor for first offense and Class I felony for subsequent offenses to operate an audiovisual recording device in a motion picture theater to record or make a copy of a motion picture without the consent of the motion picture theater owner. Requires any unlawful recording to be forfeited upon conviction. Allows theater operators to detain suspected offenders for reasonable period in order to investigate. Effective Dec. 1, 2005.
33. **S.L. 2005-311 (H 490) *False reports of destructive devices.*** Amends GS 14-69.1 to include in conduct punishable as Class H felony the false reporting that there is a

destructive device “in sufficient proximity to cause damage” to a building or vessel. Effective December 1, 2005 for offenses committed on and after that date.

34. **S.L.2005-312 (H 35) *ADETS fee increase, course changes.*** Amends GS 122C-142.1(f) to raise fee for Alcohol and Drug Education Traffic School required of many convicted impaired drivers from \$75 to \$160 and to raise the percentage of the fee that goes to the Department of Health and Human Services to 10%. Requires Dep’t to revise its rules on course requirements to set minimum number of hours of instruction at 16 hours and maximum class size at 20. Amends GS 122C-142.1 to establish minimum qualifications for instructors, beginning Jan. 1, 2009; after that date instructor must be certified substance abuse counselor, certified clinical addiction specialist, or certified substance abuse prevention consultant. Requires Dep’t to conduct ongoing outcomes evaluation study of the effectiveness of the schools. Fee increase effective for schools beginning after new rules become effective.
35. **S.L. 2005-318 (H 779) *Aiding and abetting truancy.*** Amends GS 115C-380 and 116-235(b)(2) to raise punishment for aiding and abetting truancy from Class 3 to Class 1 misdemeanor. Effective Dec. 1, 2005 for offenses committed on and after that date.
36. **S.L. 2005-319 (H 1328) *Expunction for pardon of innocence.*** Adds new GS 15A-149 to require court in which person convicted to expunge all records of any criminal case in which person receives pardon of innocence; clerk must verify that such pardon has been issued in the case. Effective August 25, 2005.
37. **S.L. 2005-329 (S 428). *Lasers pointed at planes.*** Adds GS 14-280.2 to make it a class H felony to point laser device emitting a beam of light at aircraft while the aircraft is in motion, unless use of the laser device has been approved by a governmental agency. Effective Dec. 1, 2005 for offenses committed on and after that date.
38. **S.L. 2005-334 (H 1485). *Search warrants by remote audio/video.*** Amends GS 15A-245, which deals with the issuance of search warrants, to specify how information other than the information contained in an affidavit must be received—by oral testimony under oath either in person or by audio/video transmission in which both the court official and witness can see and hear each other using equipment approved by the Administrative Office of the Courts. Effective October 1, 2005.
39. **S.L. 2005-337 (H 1401) *Police concealed weapons.*** Amends GS 14-269(b) to delete requirement that law enforcement officers be in the discharge of their duties to be exempt from statute banned concealed weapons; and to delete requirement that officers be authorized by local regulation to carry concealed weapons when off duty. Effective August 26, 2005.
40. **S.L. 2005-339 (H 1145). *No probation while on appeal for trial de novo.*** Amends GS 15A-1431 to specify that appeal to superior court from misdemeanor conviction in district court stays execution of all portions of the judgment including payment of fine and costs, probation conditions and any active punishment. Judge retains authority to impose conditions of pretrial release pending disposition of matter in superior court. Effective August 26, 2005.

41. **S.L. 2005-341 (H 1279). *Speeding to elude arrest causing death.*** Amends GS 20-141.5 to provide that when the offense of speeding to elude arrest is the proximate cause of the death of a person, the offense is punishable as a Class H felony if the speeding offense is a misdemeanor and a Class E felony if the speeding offense would have been a felony if there had not been a death (such offenses are felonies if two or more specified aggravating factors are present). Effective Dec. 1, 2005 for offenses committed on and after that date.
42. **S.L. 2005-344 (H 1023), as amended by S.L. 2005-276 (S 622). *Lottery.*** Adds new GS 18C-131 to make it a Class 1 misdemeanor to sell ticket to person under 18, or for person under 18 to purchase a lottery ticket. Makes it a defense to charge if person used ID indicating he or she was 18 or more. Specifically exempts lottery activities from existing gambling offenses in GS Ch. 14-289—299. Revises GS 18B-500 to specify that ALE agents will enforce lottery laws. Effective August 31, 2005.
43. **S.L. 2005-345 (H 320). *Changes to budget bill.*** Amends GS 14-309.15 to increase maximum cash prize that may be offered in a raffle from \$10,000 to \$50,000 and to increase the maximum total cash prizes offered by nonprofit organization in one calendar year from \$10,000 to \$50,000. Effective July 1, 2005.
44. **S.L. 2005-349 (H 670). *Commercial license changes.*** Makes numerous changes to the laws governing commercial drivers licensees. Amends GS 20-4.01 to include in definition of instate conviction a prayer for judgment continued if the offender holds a commercial license or is driving a commercial vehicle, and to include out of state no contest pleas. Amends GS 20-4.01(41a) to include offenses committed in non-commercial vehicles among those that qualify as serious traffic violations (and have special license consequences for commercial drivers). Amends GS 20-7(a) to require new residents holding a commercial driver's license to apply for a NC commercial license within 30 days of moving into NC, instead of the normal 60 days for non commercial licensees. Amends GS 20-17.4, which sets out the offenses for which convictions may result in a disqualification of the driver's right to operate a commercial vehicle, to provide that the section applies to the offenses if the person was operating a commercial vehicle or held a commercial license at the time of the offense, and to add as grounds for disqualification the following—civil revocations under GS 20-16.5 or similar statutes in other jurisdiction, if the offense occurs in a commercial vehicle; convictions of death by vehicle or manslaughter occurring while the person was operating a motor vehicle; and driving a commercial vehicle while the person's license is revoked, or is disqualified from driving a commercial vehicle. Amends GS 20-17.4 to specify that disqualifications for violations of serious traffic offenses run consecutively to other disqualifications. Amends GS 20-17.4 to provide that revocation under administrative per se law in another state is ground for disqualification of commercial licensee. Amends GS 20-36 to exclude offenses occurring in a commercial vehicle from rule that DMV not consider convictions more than ten years old, and exempts second willful refusal under GS 20-16.2 from same rule; deletes other exemptions now included in statute. Amends GS 20-37.21 to provide that person driving commercial vehicle without a license, in addition to criminal penalty, is also subject to civil penalty—minimum of \$1,000 for first offense and maximum of \$2,750 for subsequent offense). Amends GS 20-142.1 through -142.5 to provide that employer who knowingly permits driver of commercial vehicle

to violate those sections (dealing with railroad crossings) is guilty of infraction and in addition to infraction penalties, is subject to civil penalty of up to \$10,000. Effective September 30, 2005 for offenses committed on and after that date.

45. **S.L. 2005-350 (H 1500). *Underage alcohol, tobacco sales.*** Amends GS 18B-302(d) to make it a defense to a charge of alcohol sales to an underage person that the seller can show that the purchaser used a biometric identification system that shows the person to be old enough to purchase and the purchaser had previously registered with the sell a driver's license or other government ID. Makes similar change to GS 14-313, which prohibits tobacco sales to minors. Effective September 7, 2005.
46. **S.L. 2005-356 (H 569). *Domestic Violence studies.*** Directs AOC, in consultation with Department of Correction, to study programs that utilize Global Positioning Satellite (GPS) technology to track criminal offenders, and make written recommendations to the Joint Legislative Committee on Domestic Violence and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee no later than July 1, 2006, for a pilot GPS program as a condition for pretrial release pursuant to G.S. 15A-534.1. The recommendations shall include whether the alleged victim of the charged offense should have a receiver for immediate and direct notification of a GPS tracking violation by the defendant. Directs DOC to report no later than January 1, 2007, to the Joint Committee on measures the Division of Community Corrections is undertaking to address the issue of supervising domestic violence offenders.
47. **S.L. 2005-363 (H 890). *Local crime lab fee.*** Amends GS 7A-304 to assess fee of \$300, to be assessed by judge against a defendant convicted of a criminal offense, for the services of a crime laboratory operated by a local government or group of local governments, to be remitted to the general fund of the local governmental unit that operates the laboratory to be used for law enforcement purposes. The cost shall be assessed only in cases in which, as part of the investigation leading to the defendant's conviction, the lab tested fro DNA evidence, or for alcohol or drug tests. Costs to assessed only if the court finds that the work performed at the local government's laboratory is the equivalent of the same kind of work performed by the State Bureau of Investigation. Court may waive fee for good cause. Effective October 1, 2005 for offenses committed on and after that date.
48. **S.L. 2005-372 (S 1130). *Smoking in prison.*** Adds new GS 148-23.1 to prohibit the use of tobacco products inside of state correctional facilities, and directs Department of Corrections to conduct pilot program in which use of tobacco is also prohibited on the prison's grounds. Effective January 1, 2006.
49. **S.L. 2005-375 (H 1409). *Sources of bond money.*** Amends GS 15A-539, on State's motion or on own motion to conduct hearing into source of funds to satisfy secured appearance bond's security requirements; court may refuse to allow release if source of funds will not reasonably assure the defendant's appearance. State has burden of proof on this issue. Effective December 1, 2005 for hearings conducted on or after that date, but bond set before that date may not be revoked solely on the basis of this statute.
50. **S.L. 2005-383 (H 1085). *Care of dogs pending trial of owner.*** When animal shelter takes custody of dogs illegally used for fighting and owner is charged under GS 14-

362.2, shelter may petition the court to order defendant be ordered to deposit funds to pay reasonable expenses expected to be incurred by the shelter to care for the dogs pending the disposition of the charges, with minimum costs determined to be 30 days expenses. Hearing on the matter must be no less than 10 and no more than 15 business days after the petition is filed. Shelter must mail written notice of the hearing to the defendant, and to the jailer if the defendant is in custody. The court must determine the amount for 30 days' care after taking into consideration all of the facts and circumstances of the case, including the recommendation of the animal shelter and the estimated cost of caring for the dogs as well as the defendant's ability to pay. Court may instead order that dogs be maintained by defendant, but with regular monitoring by animal control personnel, and if necessary, the dogs may later be impounded and taken to the shelter. Order may be automatically renewed in subsequent 30 day intervals, if shelter files affidavit with clerk that charges not disposed of so long as affidavit filed at least two business days before a 30-day period expires. Funds must be deposited with clerk at 30 day intervals until charges resolved, or until judge relieved defendant from the obligation. Defendant may request hearing if requested at least five business days before the expiration of a 30-day period. If the defendant fails to deposit the funds as ordered within five business days of the initial hearing, or five business days of the expiration of a 30-day period, the dogs are forfeited. When funds are deposited, shelter may draw down their actual costs for the dog's care. Forfeited dogs may be adopted if appropriate. When charge is disposed of, shelter may dispose of dogs if defendant convicted, and defendant is entitled to any surplus funds not used for animal's care. If defendant not convicted, defendant is entitled to full refund. Effective December 1, 2005 for offenses committed on and after that date.

51. **S.L. 2005-393 (H 1543). *Autopsy records.*** Adds GS 130-389.1 (g) and (h) to make it a Class 2 misdemeanor willfully disclose a record of an autopsy in violation of this section (*for details about that section see # in the Civil section of this paper*); specifies that more than one disclosure of the same item by the same person is not a separate offense. Makes it a Class I felony for any person not authorized to obtain a copy of an autopsy photograph or video or audio recording, to willfully remove, copy, or otherwise create an image of an autopsy photograph or video or audio recording with intent to steal it. Effective December 1, 2005 for offenses created on and after that date.
52. **S.L. 2005-414 (S 1048). *Identity theft.*** Redefines criminal activity prohibited by Art. 19C of GS Ch. 14 as "identity theft" instead of "financial identity fraud". Expands definition of "identifying information" to include tax id numbers, internet information and passport information. Redefines venue for these offenses to include where victim or defendant lives, where "theft" took place, or in any county "instrumental to the completion of the offense". Allows law enforcement officers to take identity theft complaints even if they don't have jurisdiction to prosecute. Expands expunction rules applicable to identity theft in GS 15A147 to clarify that it applies to use of victims identity after the crime is committed. Adds GS 132-1.8 making it an infraction, punishable by \$500 penalty to file document with clerk or register of deeds that includes social security number unless authorized by law or court to do so. Effective December 1, 2005.
53. **S.L. 2005-434 (H 248). *Pseudoephedrine restrictions.*** Adds new Art. 5D to GS Ch. 90 to establish restrictions on the manner of sale of pseudoephedrine and ephedrine

products, and generally requires most form of over the counter drugs containing these substances to be sold behind the pharmacy counter and in limited quantities. Adds new GS 90 113-56 to establish criminal penalties for violating the regulatory scheme. Makes it a Class A1 misdemeanor for a retailer to violate provisions regulating manner or amount of sales, and a Class I felony for a second or subsequent offense. For a third offense at a single location, the retailer must be prohibited from selling these products at that location. Makes it a Class 1 misdemeanor for a first offense, Class A1 for a second offense and A Class I felony for subsequent offenses, for an employee or purchaser to violate the same regulations. Imposes fines on retailers who fail to provide training for their employees as mandated by GS 90-113-55 (unclear whether this is a criminal offense or a civil violation); maximum amounts of fines are as follows--\$500 for first violation, \$750 for second and \$1,000 for subsequent violations. Adds new GS 66-254.1 to make it a crime for an itinerant merchant to sell any drug or a product containing pseudoephedrine—Class 1 misdemeanor for first offense, Class A1 for second offense and Class I felony for third offense. Adds new GS 15A-736.1 to establish rebuttable presumption that bail would not assure the safety of the community for person charged with manufacture of controlled substance or possession of precursor drug, if the state shows by clear and convincing evidence that defendant was arrested for manufacture of methamphetamine or of possession of its precursor substances with knowledge that the substance will be used to manufacture methamphetamine, or that the defendant is dependent on or a regular user of methamphetamine, and violation occurred to maintain the person's dependence. *Note: this section is contained in the article of GS Ch. 15A dealing with extradition and not in the article that deals with pretrial release of persons to be tried in North Carolina*). Effective January 15, 2006 for offenses committed on and after that date.

54. **S.L. 2005-437 (H 888). *Cockfighting penalty.*** Amends GS 14-362 to make violations under that section (for participating in, aiding in, or watching a cockfight) a Class I felony. Effective December 1, 2005 for offenses committed on and after that date.
55. **S.L. 2005-460 (H 217). *Hit and run amendments.*** Amends GS 20-166 (a) (hit and run causing injury or death) and -166(c) (hit and run causing property damage or unknown physical injury) to require driver to remain at scene of accident or collision until law enforcement officer authorizes him or her to leave, unless remaining at the scene places persons in significant risk of injury. Prohibits driver from allowing the vehicle to be removed without officer's permission unless necessary to call for law enforcement office or medical assistance, and in that case, the vehicle must be returned to the scene in a reasonable time. Adds new GS 20-166.2 to prohibit passenger who knows or reasonably should know that the vehicle he or she was riding in to drive vehicle away from an accident scene before investigating officer authorizes the vehicle to be driven away. Allows vehicle to be driven away temporarily on same basis as when the original driver takes it away (to get medical help or call law enforcement). Violation is Class H felon if the underlying accident would support a felony hit and run charge and Class 1 misdemeanor if the underlying accident would support a misdemeanor charge. Effective December 1, 2005.
56. **S.L. 2005-452 (H 1213). *Expunctions .*** Amends GS 15A-146 to provide that defendants charged with multiple offenses that are disposed of by dismissal or acquittal in the same term of court may have all charges expunged if otherwise

eligible, if all the charges occurred in a 12-month period. "Term of court" means one week for superior court and one day for district court; multiple offenses need not arise out of the same transaction or occurrence or be consolidated for judgment. To be eligible, applicant must not have had expungement under GS 15A-146, 15A-145 or 90-96, and not have been convicted of any felony in state or federal court. Effective Oct. 1, 2005.

57. **S.L. 2005-461 (S 486). *Discharging weapon in occupied property.*** Amends GS 14-34.1 to make it a Class D felony to willfully discharge or attempt to discharge a firearm or barreled weapon into an occupied dwelling or conveyance that is in operation, and a Class C felony if the unlawful discharge results in serious injury. Effective December 1, 2005 for offenses committed on and after that date.

Miscellaneous

1. **S.L. 2005-56 (S 262). *District judge allowed to conduct wedding.*** Amends GS 51-1 to allow district judge in NC or from another state to conduct marriage ceremony. Effective June 23, 2005 and expires June 27, 2005. (Governor refused to sign, but became law by operation of law since Governor also did not veto the bill).
2. **S.L. 2005-69 (H 236). *Limit exclusive jurisdiction over land acquired by the United States.*** Amends GS 104-7 to provide that when the federal government is given exclusive jurisdiction over land acquired within NC with the State's consent for courthouses, post offices, forts, armories, or to be added to current military bases the state reserves the following jurisdiction: (i) the service of all civil and criminal process of NC courts; (ii) the concurrent power to enforce the criminal law, (iii) the power to enforce State laws for the protection of public health and the environment and for the conservation of natural resources; and (iv) the entire legislative jurisdiction of the State with respect to marriage, divorce, annulment, adoption, commitment of the mentally incompetent, and descent and distribution of property.
3. **S.L. 2005-75 (S 763). *Notary public/elected official sign-off.*** Exempts notaries from the requirement of having an elected official recommend them in counties in which there are, as of Jan. 1 of the year in which application is filed, 15,000 or more active notaries. Effective January 1, 2006.
4. **S.L. 2005-100 (H 878). *Conference of Clerks of Superior Court.*** Adds new Article 63 to GS Ch. 7A to establish cited conference, to be composed of elected clerks (and acting and interim clerks). Conference to meet twice a year, and is empowered to prepare training manuals, cooperate with other agencies to promote effective administration of justice and provide education in conjunction with IOG and AOC. When funds are available, may employ executive secretary (no funds provided in this budget, as of now). Effective July 1, 2005.
5. **S.L. 2005-149 (S 321). *Jurors' exemptions procedure for persons over 72.*** Amends GS 9-6.1 to raise from 65 to 72 the minimum age a person must be to be entitled to make a request for an exemption from jury service without appearing in person. Allows person over 72 to request excuse, deferral or exemption. Specifies that official making decision (chief district judge or his or her designee) may accept or reject the request or may substitute a temporary exemption for a requested permanent

exemption. Retains requirement that the person requesting exemption, etc. submit the request in writing. Effective Oct. 1, 2005 for persons summoned to service on and after that date.

6. **S.L. 2005-251 (S 593). *Exempt attorneys representing indigent clients from fee for copies.*** Amends GS 7A-308 to provide that the fee for preparation of copies is not to be charged when attorney appointed to represent an indigent person at State expense is requesting copies in connection with the appointed case. This statute will apply to attorneys appointed for indigents in criminal cases, involuntary commitments, certain juvenile cases, protective services under Chapter 108A, adjudication of incompetency, termination of parental rights. (See GS 7A-451 for list of cases in which court appointed counsel is authorized.) Effective July 1, 2005 for fees charged on or after that date.

7. **S.L. 2005-276 (S 622). *Budget miscellaneous substantive changes.***
 - Child Support Standards.* Directs Dep't of Health and Human Services to implement performance standards for each county and state child support office; standards to include costs per collection, consumer satisfaction, collections on arrearages, paternity establishments, location of absent parents and similar matters. Report due to legislature on progress made by May 1, 2006.
 - Divide districts 20 and 29.* Realigns current superior court district 20 and divides prosecutorial and district court districts by establishing Union county as a single county district 20B and remaining counties in current district 20 (Anson, Stanly, Richmond) as district 20A. Assigns current judges to districts, delays until 2008 the election for the superior court judge now residing in Stanly who is assigned to district 20A, adds new district attorney to be elected in 2006, adds new superior court judge in district 20B, effective Jan. 1, 2011 and delays election for current superior court judge assigned to that district until 2010 election. Divides current district 29 into 29A (Rutherford and McDowell) and 29B (Henderson, Transylvania and Polk). District attorney split becomes effective with 2006 election of district attorneys for each district. Other changes (superior court in 29A and B, district court in both 20 and 29 splits) effective Dec. 1, 2005 or when precleared in accordance with Voting Rights Act of 1965, whichever is later.
 - Electronic payments.* Directs Judicial Department to study feasibility of implementing electronic payments for costs and other funds collected by courts.
 - Surcharge for attorneys for Public Campaign Fund.* Amends GS 84-34 to assess a \$50 annual surcharge on each member of NC State Bar to offset cost of implementing NC Public Campaign Fund.
 - Court cost increase.* Raises criminal court fees (General Court of Justice Fee) by \$9.50 in both district and superior court, and by \$10 in civil, estates and special proceedings costs. Raises fee paid to sheriff's retirement fund from \$.75 to \$1.25. Raises maximum cost for estates or trusts from \$3000 to \$6000. Raises application fee in expunctions from \$65 to \$125. Adds \$90 fee to be paid by person subject to electronic monitoring and house arrest. Raises court costs in seat belt cases from \$50 to \$75. Fee changes effective Sept. 1, 2005.

8. **S.L. 2005-345 (H 320). *Changes to budget bill.*** Amends S.L. 2005-276, budget bill, as it affects judicial system as follows: Divides new District Court District 20B (Union County) into two electoral districts, with one judge running in one district and two in the second electoral district. Specifies that money appropriated to Indigent Defense Services may be used to create two assistant public defenders and one

support staff position in the First Defender District and 1 assistant public defender in District 3A for the purpose of representing indigent persons eligible for appointment of counsel in Superior and District Court district 2. Requires AOC to expend \$300,000 to fund operations of Mecklenburg Drug Treatment Court. Provides Judicial Dep't to use \$19,633 in fiscal 2005-06 and \$33,828 in fiscal 2006-07 to establish deputy clerk position in Hyde County, effective January 1, 2006.

9. **S.L. 2005-396 (S 327). *Pro hac vice fees.*** Amends GS 84.1 to raise fees assessed on out-of-state attorneys when they appear for a single proceeding from \$100 to \$125, with the additional \$25 going to the State Bar to help regulate the practice of out-of-state attorneys. Effective September 14, 2005.