

## 2011 Legislation Affecting Criminal Law and Procedure (Dec. 12, 2011)

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

- 1. [S.L. 2011-2](#) (H 18): Clarification of effective date of law authorizing restoration of firearms rights.** The act amends the effective date of [S.L. 2010-108](#) (H 126), which allows people convicted of nonviolent felonies to apply for restoration of the right to possess firearms and creates an exception from firearms restrictions for white collar felony convictions. See John Rubin & Jim Drennan, [2010 Legislation Affecting Criminal Law and Procedure](#) (Aug. 2010). The 2010 act contained a standard effective-date clause used in criminal law legislation—that is, the act applied to offenses committed on or after a particular date, in this instance February 1, 2011. This wording created some question about whether the restoration procedure and exception applied to a person who committed an offense before that date. The 2011 amendment clarifies that the restoration procedure and exception takes effect February 1, 2011. Thus, whether the offense date is before or after February 1, a person is eligible for restoration of firearm rights if he or she was convicted of a nonviolent felony as defined in G.S. 14-415.4, completed his or her sentence at least twenty years ago, and otherwise meets the requirements for restoration. The act is effective March 5, 2011.
- 2. [S.L. 2011-6](#) (H 3): Good faith exception to exclusionary rule for violations of state law.** Effective for trials and hearings commencing on or after July 1, 2011, the act amends G.S. 15A-974 to provide a good-faith exception to the exclusionary rule for violations of Chapter 15A of the North Carolina General Statutes. G.S. 15A-974 has provided that evidence must be suppressed if it is obtained as result of a substantial violation of Chapter 15A. The amended statute states that evidence shall not be suppressed for such a violation if the person committing the violation acted under the “objectively reasonable, good faith belief” that the actions were lawful. Amended G.S. 15A-974 requires the court, in determining whether evidence must be suppressed for a violation of the U.S. Constitution, N.C. Constitution, or Chapter 15A, to make findings of fact and conclusions of law.

In a section of the act not incorporated into the General Statutes, the General Assembly also requested that the N.C. Supreme Court reconsider and overrule its decision in *State v. Carter*, 322 N.C. 709 (1988). In that decision, our court held that the good faith exception to the exclusionary rule adopted by the U.S. Supreme Court for certain constitutional violations does not exist under our state constitution.

For a more detailed analysis of both the act's application to violations of G.S. Chapter 15A and the scope of the good-faith exception to the exclusionary rule for constitutional violations, see Bob Farb, [New North Carolina Legislation on Good Faith Exception to Exclusionary Rules](#), posting to North

- 3. [S.L. 2011-12 \(S 7\): New controlled substance offenses.](#)** Effective for offenses committed on or after June 1, 2011 (note that the effective date is earlier than the customary December 1 effective date for new offenses), the act adds four substances to the controlled substance schedules and creates new controlled substance offenses based on those substances, including trafficking offenses.

*Additional controlled substances.* Amended G.S. 90-89(5) includes three new substances as Schedule I controlled substances, which generally carry the most serious criminal penalties: 4-methylmethcathinone (also known as mephedrone); 3,4-Methylenedioxypropylvalerone (also known as MDPV); and a compound, other than bupropion, that is structurally derived from 2-amino-1-phenyl-1-propanone by modification in one of the specified ways. Amended G.S. 90-94 adds synthetic cannabinoids (as defined in new subsection (3) of G.S. 90-94) as a Schedule VI controlled substance.

*New controlled substance offenses.* Possession of any Schedule I controlled substance, including the above-described controlled substances, remains a Class I felony under G.S. 90-95(a)(3) and 90-95(d)(1), except that possession of one gram or less of MDPV is a Class 1 misdemeanor. Possession of synthetic cannabinoids *or* any mixture containing that substance are classified as follows under G.S. 90-95(a)(3) and 90-95(d)(4): a Class 3 misdemeanor for seven grams or less; a Class 1 misdemeanor for more than seven and up to 21 grams or less; and a Class I felony for more than 21 grams. Under G.S. 90-95(a)(1) and 90-95(b)(2), sale of synthetic cannabinoids is a Class H felony, and manufacture, delivery, or possession with intent to manufacture, sell, or deliver synthetic cannabinoids is a Class I felony, except the transfer of less than 2.5 grams of that substance *or* any mixture containing that substance for no remuneration does not constitute delivery.

*New trafficking offenses.* New G.S. 90-95(h)(3d) creates the offense of trafficking in MDPV, classified and punishable as follows: for 28 or more and less than 200 grams, a Class F felony with a mandatory prison term of 70 to 84 months and a minimum \$50,000 fine; for 200 or more and less than 400 grams, a Class E felony with a mandatory prison term of 90 to 117 months and a minimum \$100,000 fine; and for 400 grams or more, a Class C felony with a mandatory prison term of 225 to 279 months and a minimum \$250,000 fine. New G.S. 90-95(h)(3e) creates the offense of trafficking in mephedrone, with the same classes and punishments for the same quantities as for MDPV. New G.S. 90-95(h)(1a) creates the offense of trafficking in synthetic cannabinoids, classified and punishable as follows based on dosage units (defined as three grams of the substance *or* any mixture of the substance): for more than 50 and less than 250 dosage units, a Class H felony with a mandatory prison term of 25 to 30 months and a minimum \$5,000 fine; for 250 or more and less than 1250 dosage units, a Class G felony with a mandatory prison term of 35 to 42 months and a minimum \$25,000 fine; for 1250 or more dosage units and less than 3750 dosage units, a Class F felony with a mandatory prison term of 70 to 84 months and a minimum \$50,000 fine; and for more than 3750 dosage units, a Class D felony with a mandatory prison term of 175 to 219 months and a minimum \$200,000 fine.

- 4. [S.L. 2011-19 \(H 27\)](#), as amended by [S.L. 2011-307 \(S 684\)](#): **SBI crime lab and related changes.** Effective March 31, 2011 except as noted below, the act adds and modifies several statutes**

regarding the State Bureau of Investigation (SBI) Laboratory and forensic testing. The laboratory remains a part of the SBI, but it is renamed the State Crime Laboratory (State Crime Lab) and G.S. 114-16 is revised to direct the SBI to employ a sufficient number of skilled people to render a reasonable service to the “public and criminal justice system” (was, “prosecuting officers of the State”).

*Advisory board.* New G.S. 114-16.1 establishes a sixteen-member North Carolina Forensic Science Advisory Board within the Department of Justice, which consists of the State Crime Lab Director and fifteen members appointed by the Attorney General. The appointments must conform to the requirements in the new statute—for example, one member must be the Chief Medical Examiner, another must be a scientist with an advanced degree and experience in forensic chemistry, and the like. The new advisory board may review State Crime Lab operations, make recommendations and, on request of the Lab Director, review analytical work, reports, and conclusions of scientists employed by the Lab. This last category of review is confidential as provided in new G.S. 114-16.1(f).

*Studies and protocols on bias and error.* An uncodified section of the act (that is, a provision that will not appear in the General Statutes but still has the force of law) directs the SBI to seek collaborative opportunities and grant funds for research programs on human observer bias and sources of human error in forensic examinations and directs the State Crime Lab to develop standard operating procedures to minimize potential bias and human error.

*Professional certification.* An uncodified section of the act requires forensic science professionals at the State Crime Lab to obtain individual certification consistent with international and ISO standards within 18 months of the date the analyst become eligible to seek certification according to the standards of the certifying entity or by June 1, 2012, whichever occurs later, unless no certification is available. (The 18-month alternative was added by S.L. 2011-307.)

*Ombudsman.* An uncodified section of the act, effective July 11, 2011, creates the position of ombudsman in the State Crime Lab within the North Carolina Department of Justice. The act states that the primary purpose of the position is to work with defense counsel, prosecutorial agencies, criminal justice system stakeholders, law enforcement officers, and the general public to ensure that State Crime Lab practices and procedures are consistent with state and federal law, best forensic practices, and the interests of justice. The ombudsman must mediate complaints between the SBI and others and regularly attend meetings of the district attorneys, district and superior court judges, public defenders, Advocates for Justice, and Bar criminal law sections.

*Admissibility of forensic analysis and chemical analysis of blood or urine.* G.S. 8-58.20 has allowed a lab report of a written forensic analysis to be admitted without the testimony of the analyst if certain procedures are followed. The act amends the statute to add that for a forensic analysis to be admissible under that statute, it must be performed by a lab that is accredited as specified in the amended statute. The act makes similar changes to G.S. 20-139.1(c2) on the admissibility of a chemical analysis of blood or urine without the testimony of the analyst. As amended by S.L. 2011-307, these requirements apply only to the State Crime Lab beginning March 31, 2011, and to other laboratories conducting forensic or chemical analysis beginning October 1, 2012.

*Discovery.* Amended G.S. 15A-903(a)(1), which requires the State to make available to the

defendant its complete files as defined in the statute, states that “[w]hen any matter or evidence is submitted for testing or examination, in addition to any test or examination results, all other data, calculations, or writings of any kind shall be made available to the defendant, including, but not limited to, preliminary test or screening results and bench notes.” Amended G.S. 15A-903(c) requires all public and private entities that obtain information related to the investigation of the crimes committed or the prosecution of the defendant to disclose such information to the referring prosecutorial agency for disclosure to the defendant. New G.S. 15A-903(d) makes it a Class H felony for a person to willfully omit or misrepresent evidence or information required to be disclosed under G.S. 15A-903(a)(1) or required to be provided to the State under G.S. 15A-903(c); and makes it a Class 1 misdemeanor to willfully omit or misrepresent evidence or information required to be disclosed pursuant to any other provision of “this section” (meaning G.S. 15A-903).

5. **S.L. 2011-21 (S 20): Proprietary schools.** Effective July 1, 2011, the act amends several provisions regulating proprietary schools, including the definition of proprietary schools in G.S. 115D-87. Amended G.S. 115D-96 continues to make it a Class 3 misdemeanor to operate a proprietary school, under the amended definition, without a license or bond.
6. **S.L. 2011-22 (H 29): Retrieval of killed or wounded big game animal.** Effective October 1, 2011, the act amends G.S. 113-291.1, which regulates the taking of wild animals and birds, to permit the retrieval of a killed or wounded big game animal if done with (1) a portable light source, (2) a single dog on a leash, (3) a .22 caliber rimfire pistol, archery equipment, or handgun otherwise lawful for that hunting season, (4) from one-half hour after sunset until 11 p.m. if necessary, and (5) without use of a motorized vehicle.
7. **S.L. 2011-29 (S 248): Update of archaic disability language.** Effective April 7, 2011, the act updates several provisions to update language describing disabilities (for example, the term “incompetent person” replaces “lunatic,” a person “unable to speak” replaces “dumb,” and “physically disabled” replaces “physically defective”). Affected provisions that involve criminal law and procedure are North Carolina Rule of Evidence 601 (competency of witnesses) and G.S. 14-113 (obtaining money by false representation of physical disability).
8. **S.L. 2011-37 (H 59): No EMS credentials for sex offenders.** Effective April 12, 2011, the act adds G.S. 131E-159(h) providing that a person who is required to register as a sex offender under G.S. Chapter 14, Article 27A, may not be granted emergency medical services (EMS) credentials. The new statute does not require revocation of credentials for a person who currently has them, but it prohibits renewal of credentials. The new statute states that it applies to a person required to register and to a person “who was convicted of an offense which would have required registration if committed at a time when such registration would have been required by law.”
9. **S.L. 2011-42 (H 234): Prospective jurors who are hearing-impaired or have other disabilities.** Effective July 1, 2011, the act revises G.S. 9-3, which describes the qualifications of prospective jurors, to delete the requirement that a juror must be able to hear the English language; the statute continues to require that a juror understand English. The act also adds G.S. 9-6.1(b) to allow a

person summoned as a juror who has a disability and wishes to be excused, deferred, or exempted to make the request without appearing in person by filing a signed statement of the ground for the request. The request must be submitted to the chief district court judge of the district, or the district court judge or trial court administrator designated by the chief district court judge, at least five business days before the date on which the person has been summoned to appear. Revised G.S. 9.6.1(a), which allows a person who is 72 years or older to make a similar request, requires submission of the request at least five business days, instead of five days, before the person's scheduled appearance.

**10. [S.L. 2011-56 \(S 406\): Repeal of requirement of permit for crossbow.](#)** Effective April 28, 2011, the act revises G.S. 14-402 to eliminate the prohibition on selling, giving away, transferring, purchasing, or receiving a crossbow without a permit. The act also repeals G.S. 14-406.1, which set forth the procedure for manufacturers, wholesale dealers, and retailers to obtain a permit for the purchase and receipt of crossbows. The act does not change the permit requirements and procedures for pistols, contained in Article 52A of G.S. Ch. 14.

**11. [S.L. 2011-60 \(H 215\): "The Unborn Victims of Violence Act/Ethen's Law."](#)** Effective for offenses committed on or after December 1, 2011, the act adds a new Article 6A, "Unborn Victims" (G.S. 14-23.1 through 14-23.8) to G.S. Chapter 14, creating several new criminal offenses. The act repeals G.S. 14-18.2 (injury to pregnant woman). An "unborn child" is defined in new G.S. 14-23.1 as "a member of the species homo sapiens, at any stage of development, who is carried in the womb."

New G.S. 14-23.2 creates the offense of "murder of an unborn child," which can be committed in three ways. A person who unlawfully causes the death of an unborn child is guilty of a Class A felony, punishable by life without parole, if the person willfully and maliciously commits an act with the intent to cause the death of the unborn child or causes the death of the unborn child in the perpetration or attempted perpetration of any criminal offense in G.S. 14-17. A person who unlawfully causes the death of an unborn child is guilty of an offense subject to the same punishment as second-degree murder if the person commits an act causing the death of the unborn child that is inherently dangerous to human life and is done so recklessly and wantonly that it reflects disregard of life. Under new G.S. 14-23.3, a person commits the offense of "voluntary manslaughter of an unborn child," a Class D felony, if the person unlawfully causes the death of an unborn child by an act that would be voluntary manslaughter if it resulted in the death of the mother. Under new G.S. 14-23.4, a person commits the offense of "involuntary manslaughter of an unborn child," a Class F felony, if the person unlawfully causes the death of an unborn child by an act that would be involuntary manslaughter if it resulted in the death of the mother. Under new G.S. 14-23.5, a person commits the offense of "assault inflicting serious bodily injury on an unborn child," a Class F felony, if the person commits a battery on the mother of the unborn child and the child is subsequently born alive and, as a result of the battery, suffered serious bodily injury as defined in new G.S. 14-23.5(b). Under new G.S. 14-23.6, a person commits the offense of "battery on an unborn child," a Class A1 misdemeanor and a lesser-included offense of G.S. 14-23.5, if the person commits a battery on a pregnant woman.

The above statutes state that each of these offenses is a separate offense. An uncodified

provision in the act states that a prosecution for or conviction under the act is not a bar to conviction of or punishment for any other crime committed by the defendant as part of the same conduct. New G.S. 14-23.8 states that except for an offense under G.S. 14-23.2(a)(1), which requires an intent to cause the death of the unborn child, an offense under the new article does not require proof that the defendant knew or should have known “that the victim of the underlying offense was pregnant” or that the defendant intended to cause “the death of, or bodily injury, to the unborn child.”

New G.S. 14-23.7, “Exceptions,” states that the new article shall not be construed to permit prosecution of: a lawful abortion pursuant to G.S. 14-45.1; diagnostic testing or therapeutic treatment pursuant to usual and customary standards of medical practice; and acts by a pregnant woman, including acts resulting in a miscarriage or stillbirth as defined in new G.S. 14-23.7(3)a. and b. An uncodified provision in the act states that it shall not be construed to impose criminal liability on an expectant mother who is the victim of acts of domestic violence, as defined in G.S. Chapter 50B, that cause injury or death to her unborn child.

The act contains a severability clause, providing that a finding of invalidity of any provision in the act does not affect other provisions or applications of the act that can be given effect without the invalid provision or application.

For additional discussion of this act, see Jessica Smith, [New Crimes Protecting Unborn Children](#), posting to North Carolina Criminal Law: UNC School of Government Blog (July 18, 2011).

**12. [S.L. 2011-61 \(H 219\)](#): Name change by sex offender; venue for petition to terminate registration.**

The act amends several statutes to track name changes by people required to register as sex offenders. On the initial registration form, a registrant must indicate his or her name and any aliases at the time of conviction. See G.S. 14-208.7(b)(1a). A registrant who changes his or her name must report the change to the registering sheriff within three business days of the change. See G.S. 14-208.9. And, when periodically re-verifying his or her registration information, a registrant must indicate any name change. See G.S. 14-208.9A(a)(3)c. New G.S. 14-208.14(4a) requires the Division of Criminal Statistics to maintain its public database so as to allow access to a registrant’s name, any aliases, and any legal name changes. These provisions apply to any person who continues to be required to register on or after December 1, 2011, whether the person’s registration obligation begins before or after that date; however, a registrant is not in violation of the new requirements if the person provides the required information at the first required verification on or after December 1, 2011. Effective May 3, 2011, the act also revises G.S. 101-5 to state explicitly that the clerk of court may not grant a name change to a person required to register as a sex offender. (In 2008, the General Assembly enacted G.S. 14-202.6 and G.S. 101.6(c) to prohibit a person required to register as a sex offender from obtaining a name change under G.S. Chapter 101. See G.S. 14-202.6, 101-6(c); see also John Rubin, [2008 Legislation Affecting Criminal Law and Procedure](#), ADMINISTRATION OF JUSTICE BULLETIN No. 2008/06, at p. 10 (Nov. 2008).)

Effective for petitions filed on or after December 1, 2011, the act revises G.S. 14-208.12A(a) on the venue for the filing of a petition to terminate registration requirements. If the reportable conviction is for an offense that occurred in North Carolina, the petition is to be filed in the district where the person was convicted of the offense. If the reportable conviction is for an offense that

occurred in another state, the petition is to be filed in the district where the person resides; for out-of-state convictions, the petitioner also must notify the sheriff of the county of conviction of the petition and include an affidavit attesting to such notice and containing the mailing address and contact information of the sheriff.

**13. [S.L. 2011-62 \(H 270\)](#), as amended by [S.L. 2011-412 \(H 335\)](#): Changes to conditions of probation and repeal of tolling provision.** The act makes the following changes to regular conditions of probation under G.S. 15A-1343(b). Per the amendments in S.L. 2011-412, the following changes apply to offenses committed on or after December 1, 2011:

- The act deleted the requirement in G.S. 15A-1343(b)(2) that the probationer remain within the jurisdiction of the court and replaces it with a requirement that the probationer remain accessible to the probation officer by making his or her whereabouts known to the officer and not leaving the county of residence or the State of North Carolina without written permission by the court or probation officer. This part of the act was repealed by S.L. 2011-412, discussed further below.
- It repeals G.S. 15A-1343(b)(11), which provided that “[a]t a time to be designated by the probation officer, visit with his probation officer [at] a facility maintained by the Division of Prisons.”
- It revises G.S. 15A-1343(b)(13), which deals with warrantless searches, to eliminate reference to drug testing, and adds G.S. 15A-1343(b)(16), which requires the probationer to supply a breath, urine, or blood specimen for analysis of the possible presence of prohibited drugs or alcohol when requested by his or her probation officer for purposes directly related to the probation supervision. The new subdivision also provides that the probationer may be required to reimburse the Department of Correction for the costs of a positive test.

The act also authorizes additional special conditions of probation, effective for offenses committed on or after December 1, 2011. New G.S. 15A-1343(b1)(9b) authorizes conditions that prohibit street gang activity; new G.S. 15A-1343(b1)(9c) authorizes a condition allowing the probation officer to require the probationer to participate in Project Safe Neighborhood activities.

Last, the act repeals G.S. 15A-1344(g), which was enacted in 2009 and addressed the tolling of probation if a probationer is charged with new crimes. See Jamie Markham, [Summary and Analysis of Session Law 2009-373 \(S 920\): Probation Reform](#) at p. 8 (Aug. 4, 2009). With the repeal of G.S. 15A-1344(g) this legislative session, and the deletion in 2009 of any reference to tolling in G.S. 15A-1344(d), the probation statutes no longer contain any tolling provision for probationers charged with new crimes. Thus, the period of probation continues to run during the pendency of new criminal charges. The act applies to people placed on probation on or after December 1, 2011; this effective date was not amended by S.L. 2011-412. Therefore, people placed on probation before then would appear to be subject to the current tolling procedures in G.S. 15A-1344(g) for any new criminal charges during the period of their probation.

For a further discussion of this act, see Jamie Markham, [Probation Tolling Repealed](#), posting to North Carolina Criminal Law: UNC School of Government Blog (May 31, 2011).



14. [S.L. 2011-63](#) (H 316): **Jurisdiction of General Assembly special police.** Effective May 3, 2011, the act amends G.S. 120-32.2 to give General Assembly special police additional statewide powers. For example, the amended statute authorizes them to conduct a criminal investigation throughout the state of a threat of physical violence against the General Assembly, a member or staff of the General Assembly, or their immediate family. The amended statute, along with amended G.S. 120-19.2(d), also gives General Assembly special police statewide jurisdiction to serve a subpoena issued by the General Assembly or committee of the General Assembly.
15. [S.L. 2011-64](#) (S 49): **Increased penalty for speeding in school zone.** Effective for offenses committed on or after August 25, 2011, the act increases the penalty to \$250 (was, a minimum of \$25) for the infraction of speeding in a school zone under G.S. 20-141.1 and 20-141(e1).
16. [S.L. 2011-68](#) (H 407): **Elimination of safety helmet requirement for off-road ATV use.** In 2005, the General Assembly adopted various safety measures for the operation of all-terrain vehicles (ATVs), including a requirement that riders wear safety helmets and eye protection. See [S.L. 2005-282](#) (S 189). Effective for offenses committed on or after October 1, 2011, the act revises G.S. 20-171.19 to require the wearing of a helmet and eye protection on public streets and highways and public vehicular areas only. The act adds a new subsection (a1) to G.S. 20-171.19 requiring a rider under age 18 to wear a helmet and eye protection while operating an ATV off a public street or highway or public vehicular area. Thus, riders 18 years of age or older are not required to wear this safety equipment during off-road use. G.S. 20-171.22(c) continues to allow riders 16 years of age or older to operate ATVs without wearing helmets or eye protection on ocean beach areas where ATVs are permitted.
17. [S.L. 2011-95](#) (H 222): **Electric vehicles in carpool lanes.** Effective May 26, 2011, the act amends G.S. 20-146.2 to allow a plug-in electric vehicle, as defined in new G.S. 20-4.01(28a), to travel in a high occupancy vehicle lane regardless of the number of passengers in the vehicle as long as the vehicle is able to travel at the posted speed limit.
18. [S.L. 2011-100](#) (H 280): **County law enforcement service district.** Effective May 31, 2011, the act amends G.S. 153A-301(a)(10) to authorize a board of county commissioners to establish a law enforcement service district if the population of the county is 900,000 or more (was, 500,000), less than 10% of the population of the county is in an unincorporated area, and the county has interlocal agreements with the municipalities in the county for the provision of law enforcement services in the unincorporated areas of the county. This statute has allowed for a single police department in Mecklenburg County to cover the county and the city of Charlotte. The changes in the population requirements continue to limit application of the statute to Mecklenburg County.
19. [S.L. 2011-119](#) (S 16): **Misdemeanor death by vehicle made an implied consent offense; mandatory blood tests in certain circumstances.** Effective for offenses committed on or after December 1, 2011, the act amends G.S. 20-16.2(a1) to designate as an “implied-consent offense” a violation of G.S. 20-141.4(a2). This offense is misdemeanor death by vehicle, which involves the unintentional causing of the death of another person by the commission of a traffic violation *other* than impaired



driving.

The act also amends G.S. 20-139.1(b5), which deals with subsequent tests for an impairing substance when a person is charged with an implied-consent offense. The statute has given officers the discretion to request a test of a person's blood (or other bodily fluid or substance) in addition to or in lieu of a test of the person's breath. The amended statute requires officers to request a blood sample in addition to or in lieu of a breath test if the person is charged with a violation of G.S. 20-141.4, which involves various offenses involving death and serious injury by vehicle; however, the officer retains the discretion not to request a blood sample if the breath sample shows an alcohol concentration of .08 or more. Amended G.S. 20-139.1(b5) also provides that an officer must seek a warrant for a blood sample if the person willfully refuses to provide a blood sample, the person is charged with a violation of G.S. 20-141.4, and the officer has probable cause to believe that the offense involved impaired driving or was an alcohol-related offense subject to the implied-consent procedures in G.S. 20-16.2; the amended statute states, however, that the failure to obtain a blood sample is not grounds for dismissal and is not an appealable issue.

For a further discussion of this act, see Shea Denning, [Requests for Blood in Death by Vehicle Cases](#), posting to North Carolina Criminal Law: UNC School of Government Blog (June 22, 2011).

20. **[S.L. 2011-145 \(H 200\)](#), as amended by [S.L. 2011-192 \(H 642\)](#) and [S.L. 2011-391 \(H 22\)](#): 2011 Appropriations Act.** The 2011 Appropriations Act addresses several financial and organizational matters for law enforcement, the court system, and corrections. Below is a brief rundown. All references are to S.L. 2011-145 and sections within it unless otherwise noted. The discussion below does not review the funding and personnel cuts made by the General Assembly. For a breakdown of the cuts, see Justice and Public Safety, Section I, of the [Report on the Continuation, Expansion and Capital Budgets \(Senate Appropriations Committee\)](#) (June 16, 2011).

#### Crimes

- *Removal of signs about water quality in coastal recreation waters.* Effective for offenses committed on or after July 1, 2011, amended G.S. 113-221.3(c) makes it a Class 1 misdemeanor to remove, destroy, damage, deface, mutilate, or otherwise interfere with any sign posted by the Department of Environment and Natural Resources pursuant to subsection (b) of G.S. 113-221.3 (relating to information about water quality of coastal recreation waters) or for a person to have in his or her possession such a sign without just cause or excuse. See Section 13.3(sss).
- *Parks and forestry violations.* Effective for offenses committed on or after July 1, 2011, new G.S. 106-847 makes it a Class 3 misdemeanor to violate rules adopted by the Department of Agriculture and Consumer Services for use by the public of forests, lands, and waters under the Department's charge (formerly, under the charge of the Department of Environment and Natural Resources). See Section 13.25(o).

#### Courts (effective July 1, 2011, unless otherwise noted)

- The Administrative Office of the Courts (AOC) must contract with the National Center for State

Courts to develop a workload formula for superior court judges. Amended G.S. 7A-109 requires the minutes of the clerk to reflect the date and time of each convening of court as well as the date and time of each recess or adjournment with no further business by the court. Each month the AOC must provide this information to the National Center for State Courts, the Fiscal Research Division of the General Assembly, and the Study Committee on Consolidation of Judicial and Prosecutorial Districts (discussed below). *See* Section 15.6.

- The UNC School of Government must study the feasibility and cost of creating an Office of Prosecutorial Services and must submit its report to the House and Senate Appropriations Subcommittees on Justice and Public Safety by April 1, 2012. *See* Section 15.7.
- Amended G.S. 7A-102(a) requires that each office of the clerk of superior court must have no fewer than five total staff positions in addition to the elected clerk of superior court. *See* Section 15.8.
- The Revenue Laws Study Committee must study the penalties and fines for infractions and waivable offenses and determine whether the current amounts are appropriate. The committee must make its report to the General Assembly on the convening of the 2012 regular session. *See* Section 15.9.
- Amended G.S. 7A-304(a) requires the assessment of costs in all criminal cases in which a defendant is convicted, including cases in which a person receives an active prison sentence (previously, in such cases the judgment had to specifically require costs), which may not be waived unless the judge makes a written finding of just cause to grant a waiver. *See* Section 15.10.
- The act creates the Study Committee on Consolidation of Judicial and Prosecutorial Districts to study the number and structure of judicial and prosecutorial districts and make recommendations to reduce and consolidate those districts. The committee may submit its report to the General Assembly when it convenes for its 2012 regular session. The committee terminates on the filing of the report or convening of the 2012 regular session, whichever is earlier. *See* Section 15.11.
- The AOC must develop protocols to offer regular administrative court sessions in each district court district to hear motor vehicle infractions. Each district must offer such sessions regularly by October 1, 2011. The AOC must report to the Joint Legislative Commission on Governmental Operations by February 1, 2012. *See* Section 15.11A.
- Amended G.S. 7A-498.7(b) gives the Commission on Indigent Defense Services the authority to appoint the chief public defender in districts with public defender offices (was, senior resident superior court judge in the district). The amended statute continues to require the local bar to nominate two to three candidates, from which the Commission will make its selection. *See* Section 15.16(b).
- The Office of Indigent Defense Services must issue requests for proposals from private law firms or not-for-profit legal representation organizations for the provision of legal services to indigent clients. The Office must use private assigned counsel funds to enter into contracts when the contracts provide representation services more efficiently than current costs and ensure quality representation consistent with constitutional and statutory requirements. The Office must

report on its progress to the Joint Legislative Commission on Governmental Operations by October 1, 2011. *See* Section 15.16(c), as amended by Section 39 of S.L. 2011-391.

- Amended G.S. 7A-498.5(f) requires that the Commission on Indigent Defense Services set compensation rates for expert witnesses at a rate no greater than the rate set by the Administrative Office of the Courts under G.S. 7A-314(f). *See* Section 15.20.
- The act maintains a trial court administrator position in the following judicial districts: 4, 5, 7B/7C, 10, 12, 14, 18, 21, 26, and 28. *See* Section 15.21.
- The Department of Health and Human Services (DHHS), Division of State Operated Facilities, must issue a request for proposals for the consolidation of forensic hospital care. DHHS must report to the Joint Appropriations Subcommittee for Health and Human Services by October 30, 2011, with cost details and savings identified from the proposals. *See* Section 10.12.

Costs (effective July 1, 2011, unless otherwise noted)

- For a detailed discussion of cost changes, see the following AOC memos:
  - [Court Costs and Fee Chart](#)
  - [Legislative Increases in Court Costs and Fees, July 2011](#)
  - [Additional Legislative Increases in Court Costs and Fees, August 2011](#)
  - [2011 Costs and Fees Changes—Frequently Asked Questions](#)
- The act amends G.S. 7A-304(a)(4) to increase court costs in criminal cases from \$100.50 to \$129.50 in district court and from \$102.50 to \$154.50 in superior court. *See* Section 31.23(a).
- New G.S. 14-107.2 allows community mediation centers (also known as dispute resolution centers) to establish and charge fees for its services in worthless check programs, and amended G.S. 7A-38.7 provides that the \$60 fee assessed when a criminal case is resolved through a community mediation center will be remitted by the clerk to the Mediation Network (was, to the State Treasurer), which may retain up to \$3 for administrative expenses and must remand the remainder to the community mediation center that mediated the case. *See* Section 31.24.
- Amended G.S. 148-65.7(a) increases from \$150 to \$250 the transfer application fee for a parolee or probationer convicted in this state who requests supervision in another state under the Interstate Compact for Adult Offender Supervision. *See* Section 31.25.
- The act imposes the following additional fees, effective August 1, 2011. *See* Section 31.26, as amended by Section 7(n) of S.L. 2011-192. For a further discussion of these fees, see [Additional Legislative Increases in Court Costs and Fees, August 2011](#) at p. 3–4.
  - New G.S. 7A-304(a)(2b) imposes an \$18 fee in district court for the maintenance in county jails of people convicted of misdemeanors.
  - New G.S. 7A-304(a)(4b) imposes a cost of \$50 “for all offenses arising under Chapter 20 of the General Statutes and resulting in a conviction of an improper equipment offense.”
  - Amended G.S. 7A-313 increases from \$5 to \$10 the fee for each 24 hours of pretrial confinement.
- New G.S. 7A-304(g) provides that changes to costs or fees in G.S. 7A-304 apply to costs or fees collected on or after the effective date of the change except in “waiver” cases, in which case the

amount of the costs or fees is the lesser of the new amount of costs or fees and the amount specified in the notice portion of the citation or other criminal process. *See* Section 63(b) of S.L. 2011-391.

#### Department of Justice

- The Department of Justice must issue a request for information to determine the cost of having a private company maintain the software required for criminal information databases managed by the Criminal Information Division. The Department must report the results to the House and Senate Appropriations Subcommittees on Justice and Public Safety and to the Fiscal Research Division by March 1, 2012. *See* Section 16.6.

#### Juvenile Justice

- Amended G.S. 115D-5(b) deletes the authority of the State Board of Community Colleges to provide for the waiver of tuition and registration fees for juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention (DJJDP). *See* Section 8.12(a)
- The act states that it is the General Assembly's intent to increase the use of community-based alternatives whenever possible and reduce reliance on detention and youth development center commitments. The act directs DJJDP and the Department of Correction to work together to increase the use of in-home monitoring as an alternative to detention for juveniles. The departments must assess monitoring needs in both the adult and juvenile systems and report their findings and recommendations to the House and Senate Appropriations Subcommittees on Justice and Public Safety, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, and the Fiscal Research Division by September 1, 2011. *See* Section 17.6.

#### Corrections

- The Post-Release Supervision and Parole Commission, with the assistance of the North Carolina Sentencing and Policy Advisory Commission and the Department of Correction, must continue to analyze the amount of time each parole-eligible inmate has served compared to the time served by offenders under structured sentencing for comparable crimes and must determine whether the person has served more time in custody than the person would have served had he or she received the maximum sentence under structured sentencing. *See* Section 18.7.
- The Department of Correction must study probation and parole officer workloads, analyzing the types of offenders supervised, distribution of officers' time by type of activity, caseload carried by officers, and comparison to practices in other states. The Department must report the results of the study and recommendations for any adjustments to caseload goals to the House and Senate Subcommittees on Justice and Public Safety by January 1, 2013. *See* Section 18.13.

#### Department of Crime Control and Public Safety

- Effective January 1, 2012, the act establishes the Department of Public Safety as a new executive department and transfers to that Department the powers and functions of the

Department of Correction, Department of Crime Control and Public Safety, and Department of Juvenile Justice and Delinquency Prevention. New Article 5A of G.S. Chapter 143 (G.S. 143B-259 through 143B-259.2) describes the organization of the Department of Public Safety, the divisions within it, and the powers and duties of the Department. The act makes numerous conforming changes to existing statutes to reflect the reorganization. See Section 19.1.

21. **[S.L. 2011-146 \(S 513\): Raffles by credit unions.](#)** Effective October 1, 2011, the act adds G.S. 14-308.1(h) to permit credit unions to conduct “savings promotion raffles” under new G.S. 54-109.64. The latter statute describes the circumstances in which credit unions may conduct such raffles.
22. **[S.L. 2011-189 \(S 449\): Study of fraud against older adults.](#)** Effective June 23, 2011, the act requires the Consumer Protection Division of the Department of Justice to coordinate a task force to examine fraud against older adults. The task force includes representatives from that division, the Division of Aging and Adult Services of the Department of Health and Human Services, the North Carolina Senior Consumer Fraud Task Force, the North Carolina Association of County Directors of Social Services, the Banking Commission, the Senior Tar Heel Legislature, and other associations. The task force must make an interim report by November 1, 2011, and a final report with draft legislation by October 1, 2012, to the North Carolina Study Commission on Aging.
23. **[S.L. 2011-190 \(S 268\): Intimidating witnesses.](#)** Effective for offenses committed on or after December 1, 2011, the act amends G.S. 14-226(a) to increase the punishment for intimidating a witness, or attempting to intimidate a witness, from a Class H to a Class G felony.
24. **[S.L. 2011-191 \(H 49\): Increased punishment for DWI.](#)** Effective for offenses committed on or after December 1, 2011, the act creates a new, higher level of punishment for impaired driving—aggravated level one—and changes some punishment provisions for existing punishment levels. The act is known as “Laura’s Law”; this title is not a part of the enacted legislation, but it was the short title of the bill that ultimately was enacted.

Amended G.S. 20-179(c) requires the judge to impose an aggravated level one punishment if three or more grossly aggravating factors apply. New G.S. 20-179(f3) describes the punishment requirements for aggravated level one: (1) a fine of up to \$10,000; (2) a sentence of imprisonment of a minimum of 12 months and a maximum of 36 months; and (3) ineligibility for parole. Defendants who receive an active sentence of imprisonment must be released four months before the end of the “maximum imposed term of imprisonment.” For a discussion of the availability of good-time credits in addition to this four-month reduction, as well as other aspects of the legislation, see Jamie Markham, [Post-Release Supervision for Aggravated Level One DWI Offenders](#), posting to North Carolina Criminal Law: UNC School of Government Blog (July 28, 2011); Shea Denning, [Laura’s Law](#), posting to North Carolina Criminal Law: UNC School of Government Blog (July 13, 2011). Once released, defendants must be placed on post-release supervision with a requirement that they abstain from alcohol during this four-month period as verified by a continuous alcohol monitoring system. The term of imprisonment also may be suspended if: (1) a condition of special probation is imposed requiring a term of imprisonment of at least 120 days; (2) the defendant is required to abstain from alcohol for a minimum of 120 days to a maximum of the

term of probation as verified by a continuous alcohol monitoring system; and (3) the defendant obtains a substance abuse assessment and education or treatment. Amended G.S. 20-19(e) provides for a permanent license revocation for a person sentenced in new aggravated level one, and amended G.S. 20-17.8 requires an ignition interlock if the person's license is restored.

For defendants sentenced to a level one or two punishment for impaired driving, amended G.S. 20-179(h1) provides that the period a defendant may be required to abstain from alcohol as verified by a continuous alcohol monitoring system may be for a minimum of 30 days to a maximum of the term of probation (was, 60 days). The act also amends G.S. 20-179(h1) by eliminating the \$1,000 limit on the amount chargeable to a defendant for a continuous alcohol monitoring system imposed as a condition of probation for level one or two punishments; and it repeals G.S. 20-179(h2), which prohibited the imposition of a continuous alcohol monitoring system if the court determined that the defendant should not be required to pay the costs and the local government entity responsible for incarcerating the defendant was unwilling to pay.

For defendants charged with an offense involving impaired driving and who have a prior conviction for such an offense within seven years of the current offense, new G.S. 15A-534(i) authorizes as a condition of pretrial release abstinence from alcohol as verified by a continuous alcohol monitoring system.

New G.S. 7A-304(a)(10) imposes an additional \$100 in costs against a defendant for a conviction under G.S. 20-138.1 or 20-138.2 or for a second or subsequent conviction under G.S. 20-138.2A or 20-138.2B.

25. **[S.L. 2011-192 \(H 642\)](#), as amended by [S.L. 2011-391 \(H 22\)](#) and [S.L. 2011-412 \(H 335\)](#): **Justice Reinvestment Act.** The following is based in large part on a summary of the act by School of Government faculty member Jamie Markham. See [The Justice Reinvestment Act: An Overview](#), posting to North Carolina Criminal Law: UNC School of Government Blog (June 30, 2011). The effective dates are noted in connection with each provision. A collection of materials on the act can be found [here](#).**

*Narrowing of distinction between community and intermediate punishment.* The act retains the community/intermediate/active ("C/I/A") framework in the sentencing grids under structured sentencing, but it redefines the meaning of community and intermediate punishments. A community punishment will be one that includes supervised or unsupervised probation and any condition of probation except drug treatment court or special probation. The only requirement for a punishment to be intermediate will be that it include supervised probation; no longer will the court be required to impose one of the six intermediate conditions (such as special probation or house arrest with electronic monitoring) to make a sentence intermediate. These changes appear in amended G.S. 15A-1340.11(2) (definition of community punishment); amended G.S. 1340.11(6) (definition of intermediate punishment); and new G.S. 15A-1343(a1) (conditions a court may impose as part of a community or intermediate punishment). They apply to people placed on probation based on offenses that occur on or after December 1, 2011. For a further discussion of these changes, see Jamie Markham, [Community Punishment and Intermediate Punishment](#), posting to North Carolina Criminal Law: UNC School of Government Blog (Oct. 12, 2011).

*Authority delegated to probation officers, including authority to impose jail time.* Through

delegated authority, probation officers will be empowered to impose new conditions of probation in both community and intermediate cases, including jail confinement. The jail confinement condition is limited to two- to three-day periods that total no more than six days per month, and the jail time may be imposed only during any three separate months of the period of probation. (Thus, the most jail time an officer could impose through the condition in a single probation case would be 18 days.) The officer can impose the jail time only if the offender waives his or her right to a hearing and counsel by signing a waiver of rights, with the probation officer and a supervisor as witnesses; the act does not require the taking of the waiver by a judicial official. If the offender executes a waiver, he or she has no statutory right to have the officer's action reviewed by a court. These changes appear in amended G.S. 15A-1343.2(e) (delegated authority in community punishment cases) and amended G.S. 15A-1343.2(f) (delegated authority in intermediate punishment cases). They apply to people placed on probation based on offenses occurring on or after December 1, 2011. For a further discussion of these delegated authority provisions, see Jamie Markham, [Delegated Authority in Probation Cases](#), posting to North Carolina Criminal Law: UNC School of Government Blog (July 14, 2011); Jamie Markham, [Quick Dips](#), posting to North Carolina Criminal Law: UNC School of Government Blog (Nov. 3, 2011).

*Repeal of intensive supervision and other intermediate conditions.* The act repeals the definition of intensive supervision and the statutory special condition referring to intensive supervision. The law also repeals the definitions of "day-reporting center" and "residential program." The repealed provisions are G.S. 15A-1343(b1)(3b) and 15A-1340.11(3), (5), and (8). The repeal applies to people placed on probation based on offenses occurring on or after December 1, 2011.

*Addition of "absconding" condition.* The act adds G.S. 15A-1343(b)(3a) to make it a regular condition of supervision for all probationers that they not "abscond, by willfully avoiding supervision or by willfully making [their] whereabouts unknown to the supervising probation officer." Effective for offenses committed on or after December 1, 2011, a similar provision is added in new G.S. 15A-1368.4(e)(7a) for post-release supervisees. As amended by S.L. 2011-412, Sec. 4, the change applies to offenses committed on or after December 1, 2011.

*Limitations on judge's authority to revoke probation.* Effective for probation violations on or after December 1, 2011, the act amends G.S. 15A-1344(e) to provide that a court may revoke probation (that is, activate the entirety of a suspended sentence) for two specific types of violations only: committing a new criminal offense and absconding. For other violations, the court will be limited to other existing non-revocation options (such as imposition of a split sentence) or a new response option allowing 90 days of confinement (or up to 90 days for misdemeanors) under new G.S. 15A-1344(d2). The court is not allowed to revoke probation for a violation that does not involve absconding or a new crime unless a defendant has previously received two periods of confinement under the new 90-day confinement provision; however, if the time remaining on a defendant's maximum imposed sentence is 90 days or less, then any term of confinement ordered under new G.S. 15A-1344(d2) must be for the remaining period of the sentence. For a further discussion of these provisions, see Jamie Markham, [Confinement in Response to Violations \(CRV\) and Limits on Probation Revocation Authority](#), posting to North Carolina Criminal Law: UNC School of Government Blog (Oct. 25, 2011).

*Expansion of post-release supervision for all felonies and increase in post-release supervision for*



*Class B1 through E felonies.* Under current law, post-release supervision applies to Class B1 through E felonies only. Effective for offenses committed on or after December 1, 2011, amended G.S. 15A-1368.2(a) and (c) increase the period of post-release supervision from 9 to 12 months for Class B1 through E felonies (except for Class B1 through E felonies subject to sex offender registration, which require a five-year supervision period) and impose a new nine-month period of post-release supervision for Class F through I felonies. The act also amends G.S. 15A-1340.17(d) and (e) to add time to all the maximum sentences on the sentencing grids—an additional 3 months for the Class B1 through Class E felonies (other than those subject to sex offender registration, which are subject to an additional 60 months as provided in [S.L. 2011-307](#) (S 684)) and an additional 9 months for the lesser felonies—to account for the release of inmates 12 and 9 months, respectively, before they attain their maximum. The act does not make any changes to the minimum sentences in the sentencing grid. For a further discussion of these changes, see Jamie Markham, [Changes to Post-Release Supervision on the Way](#), posting to North Carolina Criminal Law: UNC School of Government Blog (July 19, 2011).

*Limitations on the Post-Release Supervision and Parole Commission's authority to revoke post-release supervision.* In much the same way that the act limits a court's authority to revoke probation, it amends G.S. 15A-1368.3(c)(1), effective for offenses committed on or after December 1, 2011, to limit the Commission's authority to revoke post-release supervision to supervisees who abscond or commit a new criminal offense or who are subject to sex offender registration. Other supervisees may be returned to prison for only three months at a time, after which they must be released back onto post-release supervision unless they have completed service of the time remaining on their maximum imposed term.

*Changes to habitual felon law.* Amended G.S. 14-7.6 provides that habitualized felonies will be sentenced four classes higher than the principal felony for which the person was convicted and never higher than Class C. The act specifies that this change applies if the principal felony is committed on or after December 1, 2011. For a further discussion of these changes, see Jamie Markham, [Changes to the Habitual Felon Law](#), posting to North Carolina Criminal Law: UNC School of Government Blog (Nov. 10, 2011).

*New habitual breaking and entering offense.* New Article 2D of G.S. Chapter 14 (G.S. 14-7.25 through 14-7.31) creates a new habitual breaking and entering "status offense" that a prosecutor may charge if a person has a prior felony breaking and entering conviction and is charged with a new felony breaking and entering offense (defined in the new statutes as first- or second-degree burglary, breaking out of a dwelling house burglary, breaking or entering buildings generally, breaking or entering a place of worship, or any substantially similar crime from another jurisdiction). If so charged, the second conviction is punished as a Class E felony. The act specifies that this change applies if the principal felony is committed on or after December 1, 2011. For a further discussion of this new recidivist law, see Jamie Markham, [Habitual Breaking and Entering](#), posting to North Carolina Criminal Law: UNC School of Government Blog (Nov. 22, 2011).

*Mandatory application of G.S. 90-96(a) probation for eligible defendants and other changes to discharges, dismissals, and expunctions for drug offenses.* The act changes the eligibility criteria for discharge and dismissal of certain drug offenses under G.S. 90-96(a). On the one hand, it limits eligibility by excluding defendants with prior felony convictions of any kind. On the other hand, it

expands eligibility by allowing discharge and dismissal of any felony drug possession crime under G.S. 90-95(a)(3), regardless of substance or amount. Amended G.S. 90-96(a) provides further that the court “shall” (was, “may”) place any eligible defendant on probation without entering judgment of guilt. The act also amends G.S. 90-96(a1) to allow but not require the court to place a person on probation as specified in that subsection if the current offense satisfies the criteria in that subsection and subsection (a) of G.S. 90-96. In contrast to subsection (a), subsection (a1) provides that no prior offense occurring more than seven years before the date of the current offense is considered; thus, subsection (a1) appears to provide a basis for discretionary relief for people who have older convictions that otherwise would disqualify them from obtaining mandatory relief under subsection (a). As under subsection (a), a person is entitled to a discharge and dismissal on completion of probation under subsection (a1). A person who obtains a discharge and dismissal under subsections (a) or (a1) under G.S. 90-96 may obtain an expunction of the matter if he or she satisfies the criteria in G.S. 15A-145.2(a). The act also amends the expunction provisions in G.S. 90-96(d) and the corresponding procedure in G.S. 15A-145.2(b) to allow an expunction of any felony possession offense under G.S. 90-95(a)(3) if the charges were dismissed or the person was found not guilty; and it amends the expunction provisions in G.S. 90-96(e) and the corresponding procedure in 15A-145.2(c) to allow an expunction of a conviction of a felony possession offense if the person has no prior convictions specified in those statutes. The act states that these provisions become effective January 1, 2012, and apply to people who enter a plea or who are found guilty of an offense on or after that date. That language is relatively easy to apply to the discharge and dismissal procedures in revised G.S. 90-96(a) and (a1) and the advanced supervised release provisions, discussed next, but it is unclear how it applies to the revised expunction provisions. In cases in which a person seeks expunction of a dismissal, the person may have entered no plea. The General Assembly also may not have intended to distinguish the right to obtain an expunction for a conviction based on when the person entered a plea or was found guilty. For a further discussion of the changes to G.S. 90-96, see Jamie Markham, [The New G.S. 90-96](#), posting to North Carolina Criminal Law: UNC School of Government Blog (Nov. 29, 2011). For a discussion of the basic requirements for expunction, see John Rubin, [Expunction Guide: Types, Requirements, and Impact of 2009 Legislation](#), ADMINISTRATION OF JUSTICE BULLETIN No. 2009/10 (Dec. 2009).

*Creation of advanced supervised release.* Effective for pleas or findings of guilt on or after January 1, 2012, people who are convicted of Class D through H offenses and who are in certain prior record levels will be eligible for early release from prison under “advanced supervised release” (or ASR) in new G.S. 15A-1340.18. Regardless of the actual sentence imposed, the person will have an opportunity to be released from prison after serving the shortest possible mitigated sentence he or she could have received for the offense or 80 percent of the imposed minimum if the defendant received a sentence in the mitigated range. To obtain release at the ASR date, the inmate must complete risk reduction incentives created by the Department of Correction, such as treatment, education, and rehabilitation programs (or be unable to complete such incentives through no fault of his or her own). As amended by S.L. 2011-412, Sec. 2.7, the new statute provides that the court, in its discretion and without objection from the prosecutor, may order the Department of Correction to admit a defendant to the ASR program and that the Department must admit to the ASR program only those defendants for which the court in its sentencing judgment ordered ASR. For

a further discussion of ASR, see Jamie Markham, [Advanced Supervised Release](#), posting to North Carolina Criminal Law: UNC School of Government Blog (Sept. 22, 2011).

*Elimination of the Criminal Justice Partnership Program (CJPP).* The act repeals CJPP in Article 6A of G.S. Chapter 143B and replaces it with the Treatment for Effective Community Supervision program in new Article 6B, G.S. Chapter 143B (G.S. 143B-274.1 through 143B-274.11). The repeal of CJPP eliminates the statutory requirement for a county to have a criminal justice partnership advisory board. Advisory boards typically included judges, prosecutors, defense lawyers, sheriffs, and others who advised county commissioners on the need for local community corrections programming and helped manage program implementation and evaluation. Under the new law, funding of local community corrections programs will be managed centrally by the Department of Correction. New G.S. 143B-274.8 creates a 23-member State Community Corrections Advisory Board, made up of members of the court system, service providers, and others, to advise the Department of Correction.

*Service of misdemeanors in jail.* The act amends G.S. 148-32.1 and other statutes to require that all felony sentences and all misdemeanor sentences requiring confinement of more than 180 days be served in the Department of Correction. The law retains the rule that sentences of 90 days or less should be served in the local jail and establishes a new program for people convicted of misdemeanors other than impaired driving with sentences of confinement of 91 to 180 days. Those inmates will be ordered to confinement pursuant to a new “Statewide Misdemeanant Confinement Program” administered by the North Carolina Sheriffs’ Association. The Sheriffs’ Association will place covered inmates in jails that have volunteered space for the program. The costs of housing and caring for covered inmates will be paid by a statewide fund pursuant to the terms of a contract between the Department of Correction and the Sheriffs’ Association. The rules for service of an impaired driving sentence continue unchanged. Under G.S. 20-176(c1), an impaired driving sentence must be served in the jail unless the defendant has previously been jailed for a Chapter 20 violation or unless it is for a second or subsequent impaired driving conviction. The sentencing provisions become effective January 1, 2012, but people serving sentences for misdemeanors before that date may be reassigned to a county jail to the extent the county is prepared to accept transfers. For a further discussion of this provision, see Jamie Markham, [Where to Serve a Sentence](#), posting to North Carolina Criminal Law: UNC School of Government Blog (Oct. 5, 2011).

*Evaluation and report.* The Sentencing and Policy Advisory Commission and Department of Correction must jointly conduct evaluations on the implementation of the Justice Reinvestment Act. The first report must be submitted by April 15, 2012, and annually thereafter on April 15, to the Joint Legislative Correction, Crime Control, and Juvenile Justice Oversight Committee and the Senate and House Appropriations Subcommittees on Justice and Public Safety.

**26. [S.L. 2011-193 \(H 227\): Disturbing human remains.](#)** Effective for offenses committed on or after December 1, 2011, the act amends G.S. 14-401.22 to add several new offenses:

- willfully disturbing, vandalizing, or desecrating human remains (subject to certain exceptions, such as acts by a first responder or licensed funeral director), a Class I felony;
- willfully committing or attempting to commit on any human remains any act of sexual

- penetration (subject to the same exceptions for the above offense), a Class I felony;
- attempting to conceal evidence of the death of another by knowingly and willfully dismembering or destroying human remains, a Class H felony; and
- committing the offense immediately above, knowing or having reason to know the human remains are of a person who did not die of natural causes, a Class D felony.

27. **S.L. 2011-194 (S 31): Unauthorized practice of medicine.** Effective for offenses committed on or after December 1, 2011, the act amends G.S. 90-18 to distinguish among different acts of practicing medicine without a license and to provide for different penalties. Practicing medicine without a license is a Class 1 misdemeanor; practicing without a license and representing oneself as being licensed is a Class I felony; practicing without a license by an out-of-state practitioner is a Class I felony; and practicing without a license due to the failure to complete timely annual registration or practicing while licensed under another article of Chapter 90 is a Class 1 misdemeanor.
28. **S.L. 2011-199 (H 380): Subpoenas for electronically stored information.** Effective for actions filed on or after October 1, 2011, the act amends several rules of civil procedure, applicable to civil cases; among the amended rules, however, is Rule 45 of the North Carolina Rules of Civil Procedure, applicable to criminal cases by virtue of G.S. 15A-802, which provides that Rule 45 applies to criminal cases with limited exceptions. Amended Rule 45(a)(2) provides that a subpoena to produce documents and other tangible evidence (a subpoena duces tecum) may require the production of electronically stored information and may specify the form in which the electronically stored information is to be produced. Amended Rule 45(d) elaborates on the ways in which a responding party must produce electronically stored information. The act also amends Rule 45(c) to add as a ground for objecting to a subpoena duces tecum that it subjects the person to undue expense.
29. **S.L. 2011-216 (H 381): Stopping patterns at vehicle checkpoints.** G.S. 20-16.3A(a) requires law enforcement agencies to designate in advance a pattern for stopping vehicles at checkpoints under G.S. Chapter 20. Effective for offenses committed on or after December 1, 2011, the act adds G.S. 20-16.3A(a1) to prohibit a law enforcement agency from basing a stopping pattern on a particular vehicle type other than a commercial motor vehicle.
30. **S.L. 2011-217 (H 386): Collateral consequences for real estate brokers.** Effective January 1, 2012, amended G.S. 93A-6(b) provides that the North Carolina Real Estate Commission may suspend or revoke the license of any person or entity licensed under G.S. Chapter 93A, or reprimand or censure any licensee for any misdemeanor or felony that involves false swearing, misrepresentation, deceit, extortion, theft, bribery, embezzlement, false pretenses, fraud, forgery, larceny, misappropriation of funds or property, perjury, or any other offense showing professional unfitness or involving moral turpitude that would reasonably affect the licensee's performance in the real estate business. This provision replaces a narrower list of offenses. The act also amends G.S. 93A-4 to provide that criminal record reports obtained in connection with an application for licensure are not public records.
31. **S.L. 2011-231 (H 762): Hunting on or taking pine straw from another's land without consent.** G.S.

14-159.6 has made it a Class 2 misdemeanor for a person to hunt, fish, or trap on or remove pine straw from another's land in certain circumstances. Effective for offenses committed on or after October 1, 2011, the act revises this and related statutes. Amended G.S. 14-159.6(a) makes it a Class 2 misdemeanor to hunt, fish, or trap on another's land without the written permission of the owner, lessee, or agent if the property has been posted in accordance with G.S. 14-159.7(1) or (2), discussed below. The act deletes the provision, applicable to Halifax and Warren counties only, that prohibited arrests without the consent of the landowner or agent. The amended statute requires that the written permission be carried on one's person, be dated within the past twelve months, and be displayed on request to law enforcement. A valid written permission includes permission to a club of which the person is a member.

Amended G.S. 14-159.6(b) makes it a Class 1 misdemeanor to remove pine needles or pine straw from property posted in accordance with G.S. 14-159.7(1) without the written consent of the owner or agent.

New G.S. 14-159.6(c) states that it is an affirmative defense to a violation of G.S. 14-159.6(a) or (b) to have permission from the owner, lessee, or agent even though the person did not have a written permission with him or her at the time of citation or arrest.

Amended G.S. 14-159.7 allows two ways of posting property. Subsection (1) continues the current posting specifications, such as the required size and spacing of the posted notices, and applies to both the hunting and pine straw offenses. Subsection (2) allows an owner to post property against hunting, fishing, or trapping by purple marks on trees or posts as provided in that subsection.

Amended G.S. 14-159.10 authorizes enforcement of G.S. Chapter 14, Article 22A, which includes the above statutes, by sheriffs, deputy sheriffs, law enforcement officers of the Wildlife Resources Commission, and other peace officers with general subject matter jurisdiction.

32. **[S.L. 2011-232 \(H 927\)](#): Improper receipt of decedent's retirement allowance.** Effective for acts committed on or after December 1, 2011, new G.S. 135-18.11, 128-38.5, 135.75.2, and 120-4.34 make it a Class 1 misdemeanor for a person, with intent to defraud, to receive money as a result of cashing, depositing, or receiving a direct deposit of a decedent's retirement allowance under the circumstances described in the new statutes. These statutes all relate to public employee retirement systems (teachers and state employees, county and city employees, and the like).
33. **[S.L. 2011-240 \(H 12\)](#): Restrictions on retail sales of pseudoephedrine products.** Effective January 1, 2012, new G.S. 90-113.52A requires retailers, before completing a sale of a pseudoephedrine product, to electronically submit certain information to the National Precursor Log Exchange (NPLEx) if the NPLEx system is available to North Carolina retailers without charge and the retailer has Internet access. The seller may not complete the sale if the system generates a stop alert. If the seller is unable to comply with the electronic sales tracking requirements because of a mechanical or electronic failure of the electronic sales tracking system, the seller must record that the sale was made without submission to the NPLEx system. For offenses committed on or after January 1, 2012, amended G.S. 90-113.56(a) makes it a Class A1 misdemeanor for a retailer to knowingly and willfully violate G.S. 90-113.52A; a second or subsequent offense is a Class I felony. Amended G.S. 90-

113.56(b) makes it a Class 1 misdemeanor for a purchaser or employee to knowingly and willfully violate G.S. 90-113.52A; a second offense is a Class A1 misdemeanor; a third or subsequent offense is a Class I felony. The act also directs the Legislative Commission on Methamphetamine Abuse to study the implementation of the provisions of the act and the potential cost of making pseudoephedrine products a Schedule III controlled substance; an interim report is due by the 2012 Regular Session of the 2011 General Assembly, and a final report is due by the convening of the 2013 General Assembly.

34. **[S.L. 2011-241 \(S 125\)](#): Violations related to regional schools.** Effective June 23, 2011, new Part 10 of Article 16 of Chapter 115C (G.S. 115C-238.56A through 115C-238.56N) authorizes local boards of education to jointly establish regional schools. New G.S. 115C-238.56G(3) makes it a Class 1 misdemeanor for a person to aid or abet a student's unlawful absence from a regional school. New G.S. 115C-238.56N requires the board of directors of a regional school to adopt policies on conducting criminal history checks of school personnel as defined in the statute, and subsection (h) of the statute makes it a Class A1 misdemeanor for an applicant for employment to willfully provide false information on an employment application that is the basis for a criminal history check.
35. **[S.L. 2011-243 \(H 271\)](#): Carrying of concealed weapon by off-duty probation and parole officers.** Effective December 1, 2011, new G.S. 14-269(b)(6) excludes certified state probation and parole officers while off duty from the ban on carrying a concealed weapon in G.S. 14-269(a) as long as the officer is not consuming alcohol or an unlawful controlled substance and the officer does not have alcohol or an unlawful controlled substance in his or her body.
36. **[S.L. 2011-244 \(H 311\)](#): Household goods carriers.** Effective October 1, 2011, new G.S. 20-398 makes it a Class 3 misdemeanor, punishable by a fine only of not more than \$500 for a first offense and of not more than \$2,000 for a subsequent offense, for any person to violate the provisions of new G.S. 20-398. Subject to certain exceptions, the new statute requires household goods carriers for compensation to display their name and the North Carolina number assigned to them by the North Carolina Utilities Commission. New G.S. 62-380 authorizes the Utilities Commission to assess a civil penalty for violations of G.S. 20-398. New G.S. 62-380.1 makes it a Class 3 misdemeanor, punishable by a fine only of not more than \$500 for a first offense and of not more than \$2,000 for a subsequent offense, for any person not issued a certificate to operate as a household goods carrier to represent that the person holds a certificate or is otherwise authorized to operate as a household goods carrier; the Utilities Commission also may assess civil penalties for a violation.
37. **[S.L. 2011-245 \(S 311\)](#): Authorization for warrantless arrests for pretrial release violations; electronic monitoring of sex offenders and others.** G.S. 15A-401(b) has authorized officers to arrest a person without a warrant for a violation of a pretrial release order entered under G.S. 15A-534.1(a)(2), which concerns pretrial release conditions in domestic violence cases. Effective for violations of pretrial release conditions occurring on or after December 1, 2011, amended G.S. 15A-401(b) authorizes officers to make a warrantless arrest for any violation of a pretrial release order entered under G.S. 15A-534, which is the general provision on pretrial release. Officers may make a warrantless arrest whether the violation occurs in or out of their presence.



The act also amends provisions related to electronic monitoring, effective October 1, 2011. The act adds a definition of electronic and satellite-based monitoring in G.S. 15A-101.1, the statute that addresses electronic technology generally in criminal cases. It also revises G.S. 14-208.18, which prohibits a person who is required to register as a sex offender from being on certain premises, including schools intended primarily for the use of minors. New G.S. 14-208.18(g1) provides that a person who is required to register as a sex offender and who is subject to satellite-based monitoring must wear an electronic monitoring device that provides exclusion zones around the premises of elementary and secondary schools in North Carolina. Presumably, these exclusion zones will correspond to the locations where a person may not lawfully be present. Thus, G.S. 14-208.18 prohibits people covered by the statute from being on the premises of a school intended primarily for the use of minors but does not exclude them being present beyond school premises.

- 38. [S.L. 2011-247 \(H 379\): Interstate Depositions and Discovery Act and potential applicability to criminal cases.](#)** Effective for cases pending on or after December 1, 2011, the act creates new G.S. Chapter 1F, the North Carolina Interstate Depositions and Discovery Act. Its principal purpose is to simplify the procedure for parties in a civil case in one state to take depositions of witnesses in another state. The act also may affect criminal cases because, in addition to creating new G.S. Chapter 1F, it amends North Carolina Rule of Civil Procedure 45, which is applicable to criminal cases by virtue of G.S. 15A-801 and 15A-802 except as otherwise specified. New Rule 45(f) sets forth the procedure for obtaining discovery, including obtaining a deposition, from a person residing in a state or U.S. territory outside North Carolina. The new provisions do not appear to exclude criminal cases. *See also* [Uniform Interstate Depositions and Discovery Act](#) (National Conference of Commissioners on Uniform State Laws, 2007). If the new provisions apply to criminal cases, a party in a North Carolina case would be able to obtain a deposition or other discovery in another state only if the other state allows such discovery. Thus, if another state allows depositions in criminal cases, as in Florida, a party in a North Carolina criminal case may be able to use amended Rule 45 to depose a witness residing there; if the other state does not allow depositions, the amended provisions would not give a party in North Carolina that right. Rule 45(f) provides that if required by the other state's procedures, a party first must obtain a commission (an order) from a North Carolina court before seeking the discovery in the other state.
- 39. [S.L. 2011-248 \(S 394\): Principal's duty to report certain offenses to law enforcement.](#)** G.S. 115C-288(g) has required a school principal to make a report to law enforcement if the principal has personal knowledge or actual notice from school personnel that one of the offenses listed in the statute has occurred on school property. The act rewrites the subsection to (i) expand the duty to include instances in which a principal has "a reasonable belief" that such an act has occurred; (ii) delete the provision that made violation of the duty a Class 3 misdemeanor; (iii) provide that a principal who willfully fails to make a required report to law enforcement may be subject to demotion or dismissal pursuant to G.S. 115C-325; (iv) prohibit the State Board of Education from requiring that principals report to law enforcement acts in addition to those listed in the subsection; and (v) state that nothing in the subsection may be interpreted to interfere with school employees' due process rights or students' privacy rights. The act is effective June 23, 2011, and applies



beginning with the 2011-2012 school year.

- 40. [S.L. 2011-250 \(H 408\): Changes to criminal discovery.](#)** Effective for cases pending on or after December 1, 2011, the act makes modest changes to North Carolina’s criminal discovery laws. These changes are in addition to those made in [S.L. 2011-19](#), which primarily made changes to the SBI crime lab but also explicitly required production of lab notes and data and made discovery violations a crime in some instances. Amended G.S. 15A-903(a)(1) distinguishes between a prosecutor’s office, defined as the office of the prosecuting attorney, and an investigatory agency, defined as any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor’s office. The change helps clarify the obligations of the different entities—law enforcement agencies, investigatory agencies, and prosecutors’ offices—that must provide information for disclosure to the defense. The change does not alter the obligation of the State as a whole to provide the defense with the complete files of all law enforcement agencies, investigatory agencies, and prosecutors’ offices involved in the investigation of the crimes allegedly committed or the prosecution of the defendant.

Amended G.S. 15A-903(c) provides that law enforcement and investigatory agencies must make the required files available to the prosecutor’s office on a timely basis (was, on request by the prosecutor).

New G.S. 15A-904(a3) provides that the State is not required to disclose the identity of any person who provides information about a crime to a Crime Stoppers organization under assurance of anonymity unless ordered by the court. The new subsection includes a definition of a Crime Stoppers organization.

New G.S. 15A-904(a4) provides that the State is not required to disclose the Victim Impact Statement in a case—defined as the document submitted by the victim or family to the State pursuant to the Victims’ Rights Amendment—unless otherwise required by law.

New G.S. 15A-910(c) provides that for purposes of determining whether to impose personal sanctions for untimely disclosure of law enforcement and investigatory agency files, it is presumed that prosecuting attorneys and their staffs acted in good faith if they made a reasonably diligent inquiry of those agencies and disclosed the responsive materials. This presumption does not appear to apply to the untimely disclosure of prosecutor office files. New G.S. 15A-910(d) provides that if the court imposes any sanction, it must make specific findings justifying the sanction.

Amended G.S. 15A-903(a)(2), which addresses disclosure by the prosecutor of expert witnesses, and amended G.S. 15A-905(c)(2), which addresses disclosure by the defense of expert witnesses, require the Administrative Office of the Courts and Office of Indigent Defense Services to develop standard fee scales for expert witnesses and private investigators paid with state funds.

- 41. [S.L. 2011-254 \(H 629\): Substance abuse and other treatment.](#)** Effective for sentences imposed on or after December 1, 2011, the act amends G.S. 15A-1343(b1), which deals with special conditions of probation during the period of probation and authorizes undergoing medical or psychiatric treatment and remaining in a specified institution if required for that purpose. As amended, G.S. 15A-1343(b1)(1) provides that, notwithstanding G.S. 15A-1344(e), which limits the period of special probation, a defendant may be required “to participate in such treatment for its duration regardless

of the length of the suspended sentence imposed.”

Effective June 23, 2011, the act amends G.S. 15A-1343(b3) to provide that a defendant ordered to submit to a period of residential treatment at Black Mountain Substance Abuse Treatment Center for Women must undergo a screening to determine chemical dependency. This requirement continues to apply to the Drug Alcohol Recovery Treatment program (DART) as well. Also effective June 23, 2011, amended G.S. 90-113.33(9) authorizes the North Carolina Substance Abuse Professional Practice Board to adopt rules related to the approval of a substance abuse specialty curriculum adopted by a school, college, or university.

**42. [S.L. 2011-263 \(H 36\)](#): False complaint about failure of employer to use E-Verify system.** Effective October 1, 2012, January 1, 2013, and July 1, 2013, depending on the number of the employer’s employees, the act adds a new Article 2, Verification of Work Authorization, in G.S. Chapter 64 (G.S. 64-25 through 64-38). New G.S. 64-28(a) prescribes a procedure for filing a complaint with the North Carolina Commissioner of Labor that an employer is violating its E-Verify obligations under the new article. New G.S. 64-28(b) makes it a Class 2 misdemeanor to knowingly file a false and frivolous complaint against an employer. An employer’s violation of the new E-Verify requirements is subject to administrative penalties by the Commissioner of Labor.

**43. [S.L. 2011-265 \(H 641\)](#): Certificate of relief from collateral consequences.** In 2010, the Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws) adopted the [Uniform Collateral Consequence of Conviction Act](#) to assist states in developing strategies for addressing the collateral consequences of a criminal conviction. Collateral consequences are effects that generally are not imposed as part of a criminal sentence but arise as a result of the criminal conviction and in many instances continue long after the person completes his or her sentence. North Carolina and other states impose a wide range of collateral consequences, such as licensing and employment bars and benefit disqualifications, for criminal convictions.

In the uniform act, the Uniform Law Commission recommended that states allow ex-offenders to apply for relief, according to specified criteria, from collateral consequences that could impede their ability to reintegrate into society. Effective December 1, 2011, the North Carolina General Assembly enacted such a procedure in new Article 6 of G.S. Chapter 15A (G.S. 15A-173.1 through 15A-173.6), allowing certain ex-offenders to apply to the court for a certificate of relief from collateral consequences. The North Carolina act is more limited than the uniform act, but it allows ex-offenders convicted of lower level felonies and misdemeanors to obtain some relief. Because the act does not contain any limiting language on the effective date of December 1, 2011, the procedure is available to ex-offenders who meet the requirements for relief whether their offenses or convictions occurred before or after that date.

The basic requirements for relief, contained in new G.S. 15A-173.2, are as follows:

1. The person must have been convicted of no more than two Class G, H, or I felonies or misdemeanors in one session of court and have no other convictions for a felony or misdemeanor other than a traffic violation.
2. The person must petition the court in which the convictions occurred—specifically, the senior resident superior court judge if the convictions were in superior court and the chief district court

judge if the convictions were in district court. These judges may delegate their authority to hold hearings and issue, modify, or revoke certificates of relief to other judges or to clerks or magistrates in their district. The procedure for the filing and hearing of the petition, such as the giving of notice to the district attorney's office, is described in new G.S. 15A-173.4. *See also* G.S. 15A-173.6 (requiring the victim witness coordinator in the district attorney's office to give notice of the petition to the victim).

3. The person must establish certain matters by a preponderance of the evidence, including that twelve months have passed since the person completed his or her sentence, that the person is engaged in or is seeking to engage in a lawful occupation or activity, and that the person has no criminal charges pending.

If granted, a certificate of relief applies to two types of collateral consequences: "collateral sanctions," defined as a penalty, disability, or disqualification imposed by operation of law, such as a mandatory bar on obtaining a license for a particular occupation; and "disqualifications," defined as a penalty that an agency, official, or court may impose based on the conviction, such as a discretionary bar on an occupational license. A certificate of relief relieves the person of all automatic "collateral sanctions" except for those listed in new G.S. 15A-173.3 (for example, sex offender registration requirements and firearm disqualifications); those imposed by the North Carolina Constitution or federal law (for example, the state constitutional ban on holding the office of sheriff if previously convicted of a felony and the federal bans on federally-assisted housing and food stamp benefits for certain convictions); and those specifically excluded in the certificate. A certificate of relief does not bar an entity from imposing a discretionary "disqualification" based on the conviction, but the entity may consider the certificate favorably in deciding whether to impose the disqualification. A certificate of relief also does not result in an expunction or pardon of the conviction; a person must use other mechanisms, if available for the conviction in question, to obtain those forms of relief.

Through a grant from the Z. Smith Reynolds Foundation, the indigent defense education group at the UNC School of Government is developing a searchable, electronic database, specific to North Carolina, of the collateral consequences of criminal convictions. This collateral consequences assessment tool (C-CAT) will be available in early 2012. The database will assist people in identifying the collateral consequences that apply to different offenses and the potential relief available under the new certificate-of-relief procedure. For additional information about C-CAT, contact [Whitney Fairbanks](#), Civil Defender Educator at the School of Government.

44. **S.L. 2011-267 (S 272): Crime victims compensation.** Effective for claims submitted on or after July 1, 2011, the act amends G.S. 15B-2(3), which defines "collateral source," to add a charitable gift or donation by a third party, including a charity care write-off of expenses by a medical provider. (Recoveries from collateral sources reduce the amount of compensation a crime victim may receive under the Crime Victim's Compensation Act.) Amended G.S. 15B-2(7) limits compensation for a "dependent's economic loss" (as defined in that subsection) to a maximum of \$300 per week for 26 weeks commencing from the date of the injury. Amended G.S. 15B-8.1(b) provides that all personal information, as defined in 18 U.S. C. 2725(3), of victims and claimants and all information concerning

the disposition of claims for compensation, except for the total amount of the award, must be kept confidential by the Crime Victims Compensation Commission and Director. Amended G.S. 15B-14(b) provides that, on request of the Attorney General, the proceedings on a claim for compensation shall (was, may) be suspended pending disposition of a criminal prosecution that has been commenced or is imminent.

45. [S.L. 2011-268 \(H 650\)](#): **Self-defense and guns.** Effective for offenses committed on or after December 1, 2011, the act expands the circumstances in which a person may use defensive force and own, possess, and carry a firearm.

*Self-defense and other uses of defensive force.* North Carolina law recognizes various circumstances in which a person may lawfully use force against the threat of harm. Through decades of decisions, the North Carolina appellate courts have recognized the right to defend oneself, other people, and one's home and property, among other interests, and have developed rules on when those rights apply and amount to a defense to criminal charges. New G.S. 14-51.2, 14-51.3, and 14-51.4 address several of the circumstances in which a person may use defensive force. The statutes restate the law in some respects and broaden it in others. The courts will have to examine their procedures closely to give effect to the new statutory language.

For example, the new defensive-force statutes recognize the right to use deadly force against a forcible, unlawful intrusion into a motor vehicle. The courts therefore will need to develop new jury instructions to reflect this right. If faced with such a threat, a person often would have the right to use deadly force under existing doctrines as well—namely, the right to defend oneself and any other vehicle occupants and also to prevent the commission of a dangerous felony. A person would have the right to raise these defenses and have the jury instructed on them, in addition to the new defense of motor vehicle right, in light of the general principle that a person may rely on multiple defenses that arise from the evidence and on the statement in new G.S. 14-51.2(g) that the statute “is not intended to repeal or limit any other defense that may exist under the common law.”

To take another example, the courts will have to incorporate into their procedures the new statutory presumption of lawfulness, applicable to the use of deadly force against a forcible intrusion into a home, motor vehicle, or workplace. The law has allowed a person to use deadly force against such intrusions, but the courts will have to consider the new presumption in evaluating whether the State has offered sufficient evidence to withstand a motion to dismiss by the defendant and, in cases that go to the jury, will have to give appropriate instructions explaining the presumption. The following summary highlights the key provisions of the new statutes; it does not attempt to address all of the issues the courts will need to consider, which will be covered in a later bulletin on the effect of the law.

New G.S. 14-51.2 modifies defense of habitation, called defense of home in the statute; explicitly recognizes a comparable defense for the workplace; and adopts a new defense involving motor vehicles. All involve defending against forcible intrusions into those areas under the circumstances described in the statute. Most important, the statute creates a presumption of lawfulness in the sense that if a lawful occupant of a home, motor vehicle, or workplace uses deadly force against an intruder and meets the other conditions in the statute, the occupant is presumed to have held a reasonable fear of imminent death or serious bodily harm to himself, herself, or

another. The statute states that the new presumption is rebuttable and does not apply in five detailed instances, as when “the person against whom the defensive force is used has the right to be in or is a lawful resident of the home, motor vehicle, or workplace, such as an owner or lessee, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person.” The act repeals G.S. 14-51.1, which modified the common law version of defense of home to allow deadly force to terminate as well as prevent entry by an intruder. Repealed G.S. 14-51.1 also stated that a person has no duty to retreat from an intruder into the home. New G.S. 14-51.2 restates these principles for defense of home, motor vehicle, and workplace cases.

New G.S. 14-51.3 addresses the right to use deadly and nondeadly force to defend oneself and others. The statute appears to track the courts’ approach to these rights in most respects, but it may introduce new principles or at least clarify existing ones. For example, the statute states that a person is justified in using deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if the person reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself, herself, or others. The statute does not limit this principle to cases involving a home, motor vehicle, or workplace. Under current law, a person has no duty to retreat in comparable circumstances (that is, when a person is faced with a felonious assault), but the statute’s express statement of the principle may require the court to instruct the jury about it in all cases.

New G.S. 14-51.4 describes the circumstances in which a person is not entitled to rely on the defenses in new G.S. 14-51.2 and G.S. 14-51.3—for example, when a person is the aggressor by initially provoking the use of force against himself or herself. Again, these circumstances are similar in many respects to those recognized under current law, but differences exist, requiring close comparison of the statute to existing doctrines.

*Changes to gun statutes.* In addition to the changes to the right to use defensive force, the act makes the following changes to gun rights:

- Amended G.S. 14-269(b) exempts additional personnel from the prohibition on carrying a concealed weapon. It adds exemptions for district attorneys, assistant district attorneys, and investigators with a district attorney’s office who have concealed carry permits (except for when they are in a courtroom or are drinking) and qualified retired law enforcement officers with concealed carry permits. It also allows detention and corrections officers to keep firearms locked in their vehicles at work. Amended G.S. 14-415.27 exempts district attorneys, assistant district attorneys, and investigators from the prohibitions on areas in which a person may not carry a concealed handgun.
- Amended G.S. 14-269.2(b) requires that a person “knowingly” possess or carry a firearm on school property to be charged with a Class I felony under that subsection.
- New G.S. 14-269.4(6) and G.S. 14-415.11(c)(2) allow a person with a concealed carry permit to have a firearm in a locked vehicle while on the state property specified in that statute, such as the grounds of the State Capitol Building.
- Amended G.S. 14-268.7(a) requires that a minor “willfully and intentionally” possess or carry a handgun to violate that subsection and increases the punishment from a Class 2 to Class 1

misdemeanor.

- Amended G.S. 14-269.8(a) and amended G.S. 50B-3.1(d) allow people who are subject to the firearms prohibition upon issuance of a domestic violence protective order to own a firearm. They still may not possess, purchase, or receive a firearm if subject to the firearms prohibition.
- Amended G.S. 14-288.8(b) and 14-409(b) exempt from the prohibition on weapons of mass destruction—for example, machine guns—people who lawfully may possess or own such weapons under federal law.
- New G.S. 14-408.1 makes it a Class F felony to solicit a licensed dealer or private seller of firearms or ammunition to transfer a firearm or ammunition under circumstances that the person knows would be illegal; or provide a licensed dealer or private seller with information the person knows to be materially false with the intent to deceive the dealer or seller about the legality of the transfer.
- Amended G.S. 14-415.1 provides that a person is not subject to the prohibition on possession of a firearm by a felon if, pursuant to the law of the jurisdiction in which the conviction occurred, the person has been pardoned or has had his or her firearms rights restored if the restoration could have been granted under North Carolina law.
- New G.S. 14-415.11(c1) allows a person with a concealed carry permit to carry a concealed handgun on the grounds or waters of a park within the State Parks System.
- Amended G.S. 14-415.15 reduces from 90 to 45 days the time for the sheriff to issue or deny an application for a concealed carry permit and likewise reduces from 90 to 45 days the maximum period for a temporary, emergency permit.
- Amended G.S. 14-415.23 allows local governments to adopt an ordinance prohibiting the carrying of concealed weapons in local government buildings, their appurtenant premises, and recreational facilities (was, local buildings, their appurtenant premises, and parks). The amended statute defines recreational facilities as including only playgrounds, athletic fields, swimming pools and athletic facilities. If a local government adopts an ordinance for recreational facilities, a permittee may secure the handgun in a locked vehicle in an enclosed area of the vehicle. For a further discussion of this provision, see Jeff Welty, [Guns in Parks](#), posting to North Carolina Criminal Law: UNC School of Government Blog (Sept. 26, 2011).
- Amended G.S. 14-415.24 provides that a valid concealed carry permit issued by another state is valid in North Carolina (was, if the other state grants the same right to North Carolina residents who have valid concealed carry permits).
- New G.S. 120-32.1(c1) prohibits the Legislative Services Commission from adopting rules prohibiting the transportation or storage of a firearm in a closed compartment or container within a locked vehicle on state legislative buildings or grounds. The new provision also allows a legislator or legislative employee to have a firearm in a locked vehicle in a state-owned parking space leased or assigned to that person.

46. [S.L. 2011-270 \(S 498\)](#); [S.L. 2011-282 \(H 736\)](#): **Parental choice about corporal punishment of student.** G.S. 115C-391(a)(5) has prohibited corporal punishment of a student with a disability as defined in that subsection if the student’s parent or guardian stated in writing that corporal punishment may not be administered on the student. S.L. 2011-270 amended G.S. 115C-391(a)(5) to

prohibit corporal punishment of *any* student whose parent or guardian stated in writing that corporal punishment may not be administered on the student. S.L. 2011-282, a much larger act addressing school discipline, repeals G.S. 115C-391 in its entirety but adds new G.S. 115C-390.4 containing the same provision on corporal punishment, effective beginning with the 2011-12 school year.

47. **S.L. 2011-271 (H 427): Seizure of motor vehicles in felony speeding to elude arrest cases.** Effective for offenses committed on or after December 1, 2011, the act amends G.S. 20-141.5 to provide for the seizure and forfeiture of motor vehicles used in the commission of felony speeding to elude arrest offenses under that statute. New G.S. 20-141.5(g) provides that if a person is arrested for a felony, the law enforcement agency must seize the motor vehicle and deliver it to the sheriff of the county in which the offense is committed, who must hold it until trial. The vehicle must be released before trial if: (i) the defendant executes a bond, with sufficient sureties, in an amount twice the value of the vehicle and conditioned on the vehicle's return on the day of trial as provided in G.S. 20-141.5(g)(1); (ii) the felony charge is dismissed (or, at trial, the defendant is acquitted) as specified in the same subsection; (iii) the clerk determines (as provided in G.S. 20-141.5(h)(4)) that a nondefendant motor vehicle owner is an "innocent owner" (the term is not defined); or (iv) the court, in its discretion, orders reclamation of the vehicle by the lienholder (before trial or after conviction) pursuant to the requirements of G.S. 20-141.5(g)(2).

New G.S. 20-141.5(h) provides for sale of the vehicle on conviction of a felony offense pursuant to the procedures in that subsection and in new G.S. 20-141.5(i) (addressing notice of the sale) and (j) (addressing removal of any special equipment increasing the speed of the vehicle). G.S. 20-141.5(h)(3) prohibits sale of the vehicle following conviction if the owner shows: (i) the defendant was an immediate family member of the owner's family; (ii) the defendant had no previous felony or misdemeanor convictions at the time of the offense and no previous or pending violations of G.S. Chapter 20 for the three years before the time of the offense; and (iii) the defendant was under age 19 at the time of the offense. Although this provision appears in G.S. 20-141.5(h), which deals with the procedures following conviction, the owner may be able to pursue this relief before trial, as G.S. 20-141.5(h)(3) authorizes the court to release the vehicle "at the time of hearing, or other proceeding in which the matter is considered." The subsection also states that the owner is entitled to a jury trial.

48. **S.L. 2011-277 (S 135): Use of juvenile record for bond and plea decisions.** G.S. 7B-3000(e) has permitted a criminal defendant's juvenile record of a delinquency adjudication for a felony or a Class A1 misdemeanor to be used by law enforcement, magistrates, the court, and the prosecutor for decisions about pretrial release, plea negotiations, and plea acceptance. Effective for pretrial release, plea negotiations, and plea acceptance on or after December 1, 2011, the act rewrites that statute to permit use of a juvenile record for those purposes if (i) the criminal case involves a felony or a Class A1 misdemeanor committed before the defendant's 21st birthday (unchanged from the previous version of the statute); and (ii) the delinquency adjudication for a felony or a Class A1 misdemeanor occurred after the defendant reached age 13 (was, an adjudication for such an offense within 18 months before the defendant reached age 16 or after the defendant reached age



16).

**49. [S.L. 2011-278 \(S 397\): Expunction of nonviolent felonies for offenders under age 18.](#)** Effective December 1, 2011, the act adds G.S. 15A-145.4 to create a new expunction for criminal convictions. Because the effective-date clause does not contain limiting language, the new expunction procedures appear to be available to any person who meets the requirements, regardless of whether the offense or conviction occurred before or after December 1, 2011.

- The offense must be a “nonviolent felony,” defined in subsection (a) as any felony that does not fall into one of nine categories, including a Class A through G felony, a felony that includes assault as an essential element, and a felony for which the convicted offender must register as a sex offender. Subsection (b) allows the expunction of multiple nonviolent felonies for which a person is convicted at the same session of court if none of the offenses occurred after the person had already been charged and arrested for the commission of a nonviolent felony.
- Subsections (c), (d), and (e) contain the requirements for expunction. Subsection (c) describes the requirements for the petition, and subsections (d) and (e) describe the responsibilities of the court in rendering a decision. Together they require the following:
  - The person must have been less than age 18 at the time of the commission of the nonviolent felony.
  - The petition may not be filed earlier than four years after the date of conviction or the completion of any active sentence, probation, or post-release supervision, whichever occurs later.
  - The person must not have been previously convicted of a felony or misdemeanor other than a traffic violation (required by subsections (c) and (e)), must have been free of any such conviction for the above four-year period (required by subsection (e)), and must have no outstanding warrants or pending criminal cases (required by subsection (e)).
  - The person must have performed 100 hours of community service since the conviction, “preferably related to the conviction” according to subsection (c).
  - The person must have no outstanding restitution requirements and must possess a high school diploma, high school graduation equivalency certificate, or general education development degree.
  - The person must not have a previous expunction (required by subsection (e)).
- Under subsection (c), the petition must be served on the district attorney, who has thirty days in which to file an objection. The district attorney must make his or her best efforts to contact the victim before the hearing.
- Before rendering a decision on the petition, the court must take the steps required by subsection (d), including calling on a probation officer for additional investigation or verification of the person’s conduct during the four years since the conviction in question. Subsection (e) provides that if the court finds that the petitioner has met all of the requirements, the court “may” grant the petition. Subsections (f) through (h) describe the legal effect of the granting of an expunction petition and the responsibilities of agencies affected by the order. Subsection (i) requires the probation officer assigned to the person and, if none, the court at the time of the

conviction to advise the person of the potential eligibility for expunction.

The act also amends G.S. 15A-151 to allow the Administrative Office of the Courts to disclose, for employment and certification purposes only, information about the expunction to state and local law enforcement agencies, the North Carolina Criminal Justice Education and Training Standards Commission, and the North Carolina Sheriffs' Education and Training Standards Commission. (New G.S. 15A-145.4(f) requires a person pursuing certification from either of those commissions to disclose expunged felony convictions.) The act likewise amends G.S. 17C-13 and 17E-12 to allow these commissions access to the information and to authorize them to deny, suspend, or revoke a person's certification based solely on conviction of a felony, whether or not expunged.

50. **S.L. 2011-281 (S 683): Building inspections.** G.S. 15-27.2 authorizes state and local governments to obtain an administrative inspection warrant to search property if such a search is elsewhere authorized by law. G.S. 153A-364 and G.S. 160A-424 provide county and city governments with such authority. Effective June 23, 2011, the act amends those statutes to limit the authority of local governments to inspect residential property. For a detailed discussion of the impact of the act on regulation of residential rental property, see C. Tyler Mulligan, [\*Residential Rental Property Inspections, Permits, and Registration: Questions and Answers\*](#), COMMUNITY AND ECONOMIC DEVELOPMENT BULLETIN No. 8 (UNC School of Government, Nov. 2011). For a discussion of administrative inspection warrants, see ROBERT L. FARB, ARREST, SEARCH, AND INVESTIGATION IN NORTH CAROLINA at pp. 174–76 (UNC School of Government, 3d ed. 2003).
51. **S.L. 2011-283 (H 542), as amended by S.L. 2011-317 (S 586): Limits on expert testimony.** As part of new limits in civil tort actions, the General Assembly revised North Carolina Evidence Rule 702(a) in G.S. Chapter 8C, which is applicable to criminal and civil cases. As amended, the rule allows an expert witness to give an opinion only if the testimony is based on sufficient facts or data, the testimony is the product of reliable principles and methods, and the witness has applied the principles and methods reliably to the facts of the case. The amended rule is effective for actions arising on or after October 1, 2011. For a further discussion of this legislation, see Alyson Grine, [\*Legislative Change Regarding Expert Testimony\*](#), posting to Forensic Science in North Carolina Blog (Aug. 17, 2011).
52. **S.L. 2011-285 (H 243): No fee for certificates under seal for appointed counsel.** Effective July 1, 2011, amended G.S. 7A-308(b1) provides that fees are not chargeable by the clerk of court for certificates under seal when requested by an attorney appointed or under contract with the Office of Indigent Defense Services to represent an indigent person at state expense in connection with the appointed case or contract.
53. **S.L. 2011-291 (H 595): Reorganization of legislative oversight committees.** Effective June 24, 2011, the act reorganizes and consolidates several legislative committees and commissions, some involving courts and criminal justice issues. Section 1.4 of the act renames the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, under G.S. 120-70.93 through 120-70.95, as the Joint Legislative Oversight Committee on Justice and Public Safety, adds three

members, transfers the duties of the Joint Legislative Committee on Domestic Violence to that Committee, and specifies additional matters related to juveniles for the Committee to examine. The act makes conforming changes to various statutes to provide for the submission of reports to the renamed oversight committee, such as reports by the State Bureau of Investigation on the DNA database required by G.S. 15A-266.5 and reports by the North Carolina Innocence Inquiry Commission on its activities as required by G.S. 15A-1475.

**54. [S.L. 2011-303](#) (H 805): Criminal record check as condition of obtaining name change.** Effective June 24, 2011, the act amends G.S. 101-5 to require a person who desires to obtain a name change from the clerk of superior court to provide certain information in the application for the name change, including the certified results of an official state and national criminal history record check. The amended statute directs the clerk to instruct applicants on the process for having fingerprints taken and submitted for the criminal history record check. On granting a name change, the clerk must forward the order to the Division of Criminal Information of the State Bureau of Investigation, which must update its records.

**55. [S.L. 2011-307](#) (S 684): Changes in maximum sentence and post-release supervision for offenses requiring registration as a sex offender.** Effective for offenses committed on or after December 1, 2011, new G.S. 15A-1340.17(f) adds sixty months to the maximum term of imprisonment for Class B1 through E felonies requiring registration as a sex offender. This sixty-month increase corresponds to the sixty-month period of post-release supervision for Class B1 through E felonies requiring registration as a sex offender. The additional sixty months is in lieu of the nine months added to the maximum term of imprisonment under current law for all Class B1 through E felonies and the additional twelve months required for all Class B1 through E felonies under the Justice Reinvestment Act ([S.L. 2011-192](#) (H 642)), applicable to offenses committed on or after December 1, 2011). Amended G.S. 15A-1368.2(a) provides that a person whose maximum sentence is increased by sixty months pursuant to new G.S. 15A-1340.17(f) must be released for post-release supervision sixty months before the end of his or her sentence. As a result of these changes, if a person violates post-release supervision, he or she may be returned to prison for an additional sixty months. Amended G.S. 15A-1354(b) and 15A-1368(a)(5) provide that if a defendant is convicted of more than one offense, the sixty-month increase does not apply to the additional offenses. For a discussion of the potential *Blakely* implications of this change (that is, whether a jury must make findings to allow increase of the sentence beyond its maximum), as well as other aspects of this act, see Jamie Markham, [Changes to Post-Release Supervision for Sex Offenders](#), posting to North Carolina Criminal Law: UNC School of Government Blog (July 21, 2011).

Effective June 27, 2011, amended G.S. 15A-1368.2(b) provides that “a willful refusal to accept post-release supervision or to comply with the terms of post-release supervision,” as defined in the amended statute, is punishable as a contempt of court under G.S. 5A-11 and may result in imprisonment for up to thirty days under G.S. 5A-12. The change applies to all offenses requiring registration as a sex offender, not just Class B1 through E felonies, and also appears to apply to offenses committed before or after the stated effective date as long as the person is still on post-release supervision and commits the violation on or after the effective date. The amended statute

states that a person who is imprisoned for this contempt is not entitled to credit for time served against the sentence for which the person is subject to post-release supervision. The amended statute also states that if a person refuses post-release supervision and is not released for that reason, post-release supervision is tolled—that is, the person is still subject to the applicable period of post-release supervision. Amended G.S. 143B-266(a) gives the Post-Release Supervision and Parole Commission authority to conduct contempt proceedings for such a violation in accordance with the requirements for plenary contempt proceedings under G.S. 5A-15. In plenary contempt proceedings, an indigent respondent is entitled to appointed counsel. *See* G.S. 7A-451(a)(1) (providing for the right to appointed counsel if imprisonment is likely to be imposed); *Hammock v. Bencini*, 98 N.C. App. 510 (1990) (recognizing the right to appointed counsel for criminal contempt if imprisonment is likely to be imposed); *McBride v. McBride*, 334 N.C. 124 (1993) (recognizing the same right for civil contempt).

56. **S.L. 2011-313 (S 602), as amended by S.L. 2011-412 (H 335): Allowing fowl to run at large.** Effective for offenses committed on or after December 1, 2011, the act amended G.S. 68-25 to make it a Class 3 misdemeanor for a person to permit any domestic fowl to run at large on the lands of a commercial poultry operation of another person; and for a person who owns or operates a commercial poultry operation to permit the commercial operation’s fowl to run at large on adjoining property. S.L. 2011-412, Sec. 3.1, repeals the prohibition applicable to commercial poultry owners and operators.
57. **S.L. 2011-321 (S 98): Restriction on availability of information revealing natural voice of 911 caller.** G.S. 132-1.4(c)(4) provides that the contents of 911 calls are public records except for contents that reveal information that may identify the caller, victim, or witness (such as the caller’s name). Effective June 27, 2011, amended G.S. 132-4.1(c) protects the natural voice of the caller, victim, or witness and allows release of a written transcript or altered voice reproduction to do so; however, the amended statute provides that “the original call shall be provided under process to be used as evidence in any relevant civil or criminal proceeding.”
58. **S.L. 2011-323 (S 131): Collection fees for unpaid fines, fees, costs, and restitution.** Effective for cases adjudicated on or after July 1, 2011, amended G.S. 7A-321 includes city and county governments among the agencies with which the Administrative Office of the Courts may contract to collect unpaid fines and fees and allows such contracts to provide that the collecting agency may keep the collection assistance fee. The amended statute also allows collection contracts to be used for collecting restitution.
59. **S.L. 2011-324 (S 143): Restrictions on access by offenders to public employees’ personnel information.** G.S. 126-23 has provided that agencies having custody of the personnel information identified in that statute for public employees—such as the name of the employee, current position, office or station to which the employee is assigned, and disciplinary action against the employee—must permit examination of the records of that information. Effective June 27, 2011, new G.S. 126-23(d) provides that people in the custody or under the supervision of the Department of Correction or a local confinement facility are not entitled to access to and are prohibited from obtaining such

records unless authorized by a court order. New G.S. 126-23(e) gives an attorney investigating unlawful misconduct or abuse by a Department of Correction employee the right to obtain information sufficient to identify the full name of the employee and current position with the Department (or the last position and date of employment of the employee); however, the attorney may not give the offender copies of departmental records or official documents unless authorized by a court order.

- 60. [S.L. 2011-325 \(S 144\): Regulation of cash converter businesses.](#)** Effective for purchases by cash converters on or after December 1, 2011, the act amends G.S. Chapter 91A, which regulates pawnbrokers, to add cash converter businesses as defined in amended G.S. 91A-3, to require such businesses to keep the records described in new G.S. 91A-7.1, to make such businesses subject to the prohibitions in G.S. 91A-10, and to make violations a Class 2 misdemeanor under G.S. 91A-11 (except for violations of G.S. 91A-10(a)(6) or (b), which involve the taking or purchasing of an item known to be stolen and are subject to prosecution under North Carolina's criminal statutes).
- 61. [S.L. 2011-326 \(S 148\): Technical corrections to appointment of counsel and changes to controlled substance schedules.](#)** Effective June 27, 2011, the act makes technical corrections to numerous statutes, including the following to specify, consistent with other statutes, that the appointment of counsel for a person entitled to counsel at state expense must be made in accordance with rules adopted by the Office of Indigent Defense Services: G.S. 7B-602(a) and 7B-1101.1(a) (provisional counsel for parent in abuse, neglect, or dependency cases and termination of parental rights cases); G.S. 15A-1345(e) (counsel for probationer for revocation proceedings); and G.S. 15A-269(c) and 15A-270.1 (counsel for motion for postconviction DNA testing and for appeal of denial of motion).
- The act also adds the following substances to the controlled substances schedules: in Schedule I, alpha-methyltryptamine and 5-methoxy-n-diisopropyltryptamine in G.S. 90-89(3) and n-benzylpiperazine and 2.5-dimethoxy-4-(n)-propylthiophenethylamine in G.S. 90-89(5); in Schedule II, lisdexamfetamine, including its salts, isomers, and salts of isomers in G.S. 90-90(3) and tapentadol in G.S. 90-90(2); and in Schedule III, nandrolone decanoate (was, nandrolone deconoate) in G.S. 90-91(k)5. These substances are not new. The Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services previously added them (other than the last, which involves a spelling correction) to the controlled substance schedules by administrative rule pursuant to its authority under G.S. 90-88, which authorizes the Commission to add, delete, or reschedule controlled substances. See [10 N.C. ADMIN CODE 26F.0102, .0103](#).
- 62. [S.L. 2011-329 \(S 241\): Level one DWI sentence if minor or disabled person is in vehicle.](#)** Effective for offenses committed on or after December 1, 2011, amended G.S. 20-179(c) requires that a person convicted of impaired driving be sentenced to a level one punishment if the grossly aggravating factor in amended G.S. 20-179(c)(4) applies. That subsection, as amended, makes it a grossly aggravating factor for a person to drive while impaired with (i) a child under age 18; (ii) a person with the mental development of a child under age 18; or (iii) a person with a physical disability preventing unaided exit from the vehicle. Previously, this grossly aggravating factor applied only to driving while impaired with a child under age 16 in the vehicle and, for a person to be sentenced at level one, at least two grossly aggravating factors had to be present.

- 63. [S.L. 2011-329 \(S 241\)](#): Recording of custodial interrogations for certain crimes and in cases involving juveniles.** In addition to the above changes involving DWI sentencing, the act revises G.S. 15A-211, which was part of several innocence initiatives that were enacted in 2007 and required electronic recording of custodial interrogations in homicide investigations at any place of detention. See John Rubin, [2007 Legislation Affecting Criminal Law and Procedure](#), ADMINISTRATION OF JUSTICE BULLETIN No. 2008/01, at pp. 5–6 (Jan. 2008). Effective for offenses committed on or after December 1, 2011, amended G.S. 15A-211 requires electronic recording of custodial interrogations at any place of detention for investigations related to any Class A, B1, or B2 felony and any Class C felony of rape, sex offense, or assault with a deadly weapon with intent to kill inflicting serious injury. The amended statute also requires electronic recording of all custodial interrogations of juveniles in criminal investigations conducted at any place of detention; this provision is not limited to specific offenses. The act does not define the term “juvenile.” The act may apply to custodial interrogations for all offenses committed by juveniles under age 16—that is, to delinquency cases. It also may apply to custodial interrogations for all offenses committed by juveniles under age 18 because the term “juvenile” is defined, at least for purposes of G.S. Chapter 7B, as a person who has not reached his or her 18th birthday. G.S. 7B-101(14); see also *State v. Fincher*, 309 N.C. 1 (1983) (applying statutory juvenile warning requirements to defendant under age 18). Amended G.S. 15A-211(c) also provides that for all interrogations subject to the statute a visual and audio recording must be simultaneously made when reasonably feasible, but the defendant may not raise the failure to do so as grounds for suppression under the statute.
- 64. [S.L. 2011-333 \(S 324\)](#): Cherokee ABC Commission.** Effective June 27, 2011, the act authorizes the Eastern Band of Cherokee Indians, subject to the approval of the Secretary of the U.S. Department of the Interior, to establish its own Alcoholic Beverage Control (ABC) Commission. For a further discussion of the act, see Michael Crowell, [2011 North Carolina Legislation Affecting Alcoholic Beverage Control](#), at p. 2 (July 2011).
- 65. [S.L. 2011-336 \(S 349\)](#): Collateral consequences for optometrists.** Effective June 27, 2011, the act adds a number of new provisions regulating optometrists, including in new G.S. 90-121.5(b4) that licensees must self-report to the State Board of Examiners in Optometry an arrest or indictment for a felony, driving while impaired, or possession, use, or sale of any controlled substance.
- 66. [S.L. 2011-349 \(474\)](#): Photo identification required for dispensing of certain controlled substances.** Effective March 1, 2012, new G.S. 90-106.1 provides that pharmacies must require a person who is seeking dispensation of a Schedule II controlled substance or a Schedule III controlled substance listed in subdivision 1 through 8 of G.S. 90-91(d) to present a valid, unexpired government-issued photographic identification in one of the following forms: a driver’s license, a special identification card issued under G.S. 20-37.7, a military identification card, or a passport. The new statute does not apply to the dispensation of these controlled substances to employees of health care facilities, as defined in G.S. 131E-256(b), for the benefit of their patients.
- 67. [S.L. 2011-355 \(S 743\)](#): Violations of limited volunteer license for doctors and physician assistants.** Effective June 27, 2011, new and amended G.S. 90-12.1A, 90-12.1B, 90-12.4A, and 90-12.4B make it



a Class 3 misdemeanor, punishable by a fine from \$25 to \$50, for a holder of a limited or retired limited volunteer license to practice medicine and surgery or as a physician assistant in violation of the limitations of the license.

**68. [S.L. 2011-356](#) (S 762): Assault inflicting physical injury on law enforcement officers and others.**

Effective for offenses committed on or after December 1, 2011, the act creates new offenses with enhanced punishments for assaults inflicting physical injury on certain personnel.

New G.S. 14-34.7(c) makes it a Class I felony to assault a law enforcement, probation, or parole officer or detention facility employee in the discharge or attempted discharge of his or her duties if the assault inflicts “physical injury.” The new statute states that physical injury includes “cuts, scrapes, bruises, or other physical injury which does not constitute serious injury.” Assault on one of the listed officers that does not inflict physical injury remains a Class A1 misdemeanor under G.S. 14-33(c)(4), which covers assaults on state and local government officers and employees.

Amended G.S. 14-34.6(a), which has made an assault on a firefighter, emergency medical technician, medical responder, or emergency department personnel a Class A1 misdemeanor, creates the offense of assault inflicting physical injury on such personnel and makes the offense a Class I felony. An assault on these personnel that does not inflict physical injury is no longer covered by that statute; therefore, unless these personnel are state or local government employees, an assault that does not inflict physical injury appears to be a simple assault, a Class 2 misdemeanor under G.S. 14-33(a). Amended G.S. 14-34.6(b), which has made it a Class I felony to assault any of the personnel identified in subsection (a) if the assault inflicts serious bodily injury or is with a deadly weapon, makes a violation of amended subsection (a) a Class H felony if it inflicts serious bodily injury or is with a deadly weapon. As a result of this change, an assault on these personnel that does not inflict physical injury but is with a deadly weapon appears to be a Class A1 misdemeanor under G.S. 14-33(c)(1) and no longer a felony. Amended G.S. 14-34.6 does not contain its own definition of physical injury.

Amended G.S. 14-288.9, which has made it a Class 1 misdemeanor to assault emergency personnel as defined in that statute, creates the offense of assault causing physical injury to such personnel, a Class I felony. An assault on these personnel that does not inflict physical injury is no longer covered by that statute; therefore, unless they are state or local government employees, an assault that does not inflict physical injury appears to be a simple assault, a Class 2 misdemeanor under G.S. 14-33(a). Amended G.S. 14-288.9 does not contain its own definition of physical injury.

**69. [S.L. 2011-361](#) (H 113): Increased penalty for unsafe movement affecting motorcyclist.**

G.S. 20-154(a) requires a driver, before starting, stopping, or turning from a direct line, to see that the movement can be made safely. When such a movement may affect another driver, the moving driver must provide the appropriate signal. Violation of this provision, commonly referred to as “unsafe movement,” is an infraction punishable by a penalty up to \$100 under G.S. 20-176. Effective for offenses committed on or after December 1, 2011, new G.S. 20-154(a1) makes a violation of G.S. 20-154(a) an infraction with a penalty of at least \$200 if it causes a motorcyclist to change travel lanes or to leave the portion of the street or highway designated as a travel lane; and it makes a violation of G.S. 20-154(a) an infraction with a penalty of at least \$500 if the violation results in a



crash causing property damage or personal injury to a motorcyclist or passenger.

70. [S.L. 2011-369 \(H 432\)](#): **Taking of feral swine.** Effective for acts on or after October 1, 2011, new G.S. 113-29.12 makes it unlawful to remove feral swine from a trap while the swine is still alive or to transport the live swine after that removal, and new G.S. 113-294(s) makes it a Class 2 misdemeanor to violate new G.S. 113-291.12, designating the acts of removal and transport as separate offenses.
71. [S.L. 2011-377 \(H 649\)](#), as amended by [S.L. 2011-412 \(H 335\)](#): **Bail bondsmen regulations and bond forfeiture.** The act makes two sets of changes, one involving miscellaneous regulations of bail bondsmen and the other on the procedure for setting aside a bond forfeiture.

Effective June 27, 2011, the act makes the following amendments to G.S. Chapter 58: (1) new G.S. 58-17-16 provides that a surety is not required to return any portion of a premium to the defendant if, after entering into an agreement, the defendant's bond is reduced; (2) amended G.S. 58-71-80(a) lists additional grounds for denying, suspending, and imposing other adverse license consequences against a bondsman, including convictions involving dishonesty and breach of trust; (3) amended G.S. 58-71-82 allows a person to hold simultaneously a professional bondsman's and runner's license; and (4) new G.S. 58-71-122 allows a licensed professional bondsman to transfer the bondsman's business to another licensed professional bondsman subject to the condition, among others, that the transferor remain responsible for all outstanding bond obligations until relieved as provided in the new statute.

Effective December 1, 2011, amended G.S. 15A-544.5(d)(1) allows a defendant, surety, professional bondsman or runner, or bail agent acting on behalf of an insurance company to move to set aside a forfeiture (was, defendant or surety generally); amended G.S. 15A-544.5(d)(2) specifies that the moving party must serve a copy of the motion on the district attorney and attorney for the county board of education and that the clerk of superior court also must provide a copy, by mail or personal delivery, to those attorneys; and amended G.S. 15A-544.5(d)(4) provides that the district attorney and attorney for the board of education have twenty days to object from the date a copy of the motion is provided by the clerk of superior court. The act makes the first two of these changes to the procedure for moving for relief from a judgment of forfeiture in G.S. 15A-544.8.

The act's preamble also refers to the North Carolina Court of Appeals unpublished decision of [State v. Cortez](#) (April 19, 2011), in which the clerk of court granted a motion to set aside a forfeiture when the district attorney and county board of education did not file a timely objection. Consistent with earlier published decisions, the Court of Appeals held that the clerk did not have the authority to grant the motion because it did not specify any of the required grounds for setting aside a forfeiture. The act's preamble states that it was not the intent of the General Assembly that the description of the content of motions in G.S. 15A-544.5(d)(1) would constitute a jurisdictional limitation on the clerk's authority to grant such motions; but, the body of the act made no changes to the required grounds for setting aside forfeitures. The third edition of the bill would have amended G.S. 15A-544.5(d)(4) to require the clerk to enter an order setting aside a forfeiture order "regardless of the basis for relief asserted in the motion, the evidence attached, or the absence of either" if a timely objection was not filed, but this language was not part of the enacted legislation.

When the General Assembly briefly reconvened in September 2011, however, it restored the deleted language and directed in G.S. 15A-544.5(d)(4) that if a timely objection is not filed the clerk must set aside a forfeiture regardless of the grounds asserted or absence of grounds. See S.L. 2011-412, Sec. 4.2. The amended statute also specifies that the clerk must serve a motion to set aside a forfeiture on the district attorney and board of education in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. According to S.L. 2011-412, the amended statute becomes effective October 15, 2011; the other changes to G.S. 15A-544.5, in S.L. 2011-377, do not become effective until December 1, 2011.

**72. [S.L. 2011-378](#) (H 662): Fee for electronic monitoring as a condition of pretrial release.** Effective July 1, 2011, the act adds G.S. 7A-313.1 to allow a county that provides the personnel, equipment, and other costs of electronic monitoring as a condition of pretrial release to collect a fee from the offender that is the lesser of the amount of the jail fee allowed by G.S. 7A-313 (\$10 for each 24 hours of confinement beginning August 1, 2011) or the actual cost of providing the electronic monitoring. The new statute states that a county may not collect a fee from an offender who is determined to be indigent and entitled to court-appointed counsel. This fee is not collected by the clerk of court.

**73. [S.L. 2011-381](#) (H 761): Tampering with ignition interlock system; false special identification cards; criminal history checks of applicants for restoration of a revoked driver's license.** Effective for offenses committed on or after December 1, 2011, new G.S. 20-17.8A makes it a Class 1 misdemeanor to

- tamper with, circumvent, or attempt to circumvent
- an ignition interlock device required to be installed on a motor vehicle by judicial order, statute, or condition for an individual to operate a motor vehicle
- for the purpose of
  - avoiding or altering testing on the ignition interlock device in the operation or attempted operation of a vehicle, or
  - altering the testing results received or results in the process of being received on the ignition interlock device.

The new statute makes each act a separate violation.

Also effective for offenses committed on or after December 1, 2011, amended G.S. 20-30 prohibits falsehoods related to special identification cards in the same manner as for driver's licenses and learner's permits.

Effective December 1, 2011, new G.S. 114-19.31 authorizes the Department of Justice (DOJ) to provide the Division of Motor Vehicles (DMV) with a criminal history record of any application for restoration of a revoked driver's license. DMV must submit the applicant's fingerprints and signed consent to DOJ and must keep the information it obtains confidential. DOJ may charge a fee for the criminal history record check, and DMV may charge the applicant with its expenses.

**74. [S.L. 2011-385](#) (S 636), as amended by [S.L. 2011-412](#) (H 335): Provisional driver's licenses.** The act

amends G.S. 20-11(d), (e), and (f) to place additional restrictions and requirements on limited learner's permits and provisional licenses. Per amendments in S.L. 2011-412, Sec. 3.2, these changes become effective October 1, 2011, and January 1, 2012, depending on the type of restriction and permit or license. Effective for offenses committed on or after January 1, 2012 (per S.L. 2011-412, Sec. 3.2), new G.S. 20-13.3 provides for a civil revocation of a limited learner's permit or provisional license of a person under age 18 if the person is charged with a "criminal moving violation" as defined in the new statute. For a further discussion of these changes, see Shea Denning, [S.L. 2011-385 Targets Unsafe Driving by Teenagers](#), posting to North Carolina Criminal Law: UNC School of Government Blog (August 3, 2011); Shea Denning, [Update on New G.S. 20-13.3: Civil License Revocations for Provisional Licensees](#), posting to North Carolina Criminal Law: UNC School of Government Blog (Oct. 18, 2011); [2011 Legislation of Interest to Court Officials](#) (summarizing S.L. 2011-385).

75. [S.L. 2011-389 \(H 678\)](#): **Pilot program for release of inmates to adult care homes.** Effective June 28, 2011, the act directs the Department of Health and Human Services (DHHS), in collaboration with the Department of Correction, to establish a pilot program to allow inmates in need of personal care services and medication management to be placed in an adult care home. The act requires DHHS to select one adult care home for the pilot and to report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee no later than 18 months after the home admits its first resident.
76. [S.L. 2011-394 \(H 119\)](#): **Recycling violations by ABC permittees.** Effective July 1, 2011, new G.S. 130A-309.10 prohibits certain ABC permittees from knowingly disposing of beverage containers that are required to be recycled under G.S. 18B-1006.1 in landfills or incinerators.
77. [S.L. 2011-408 \(S 315\)](#): **Campaign signs in highway rights-of-way.** G.S. 136-32 has made it a Class 1 misdemeanor to place an unauthorized sign on a highway. Effective for elections held on or after October 1, 2011, amended G.S. 136-32 applies this prohibition to political signs but exempts political signs of a certain size in designated areas during periods before and after elections. New G.S. 136-32(e) makes it a Class 3 misdemeanor for a person to steal, deface, vandalize, or unlawfully remove a lawful political sign.
78. [S.L. 2011-411 \(S 580\)](#): **Automatic reinstatement of waivable offense.** Effective September 15, 2011, new G.S. 15A-932(d1) provides that if a person is charged with a waivable offense only, the prosecutor dismisses the case with leave for the person's failure to appear, and the person subsequently tenders a waiver and payment of all applicable fines, costs, and fees, the clerk must accept the waiver without written reinstatement of the case from the prosecutor. The new subsection also provides that on disposition of the case in this manner, the clerk must recall any outstanding criminal process (that is, any order for arrest for the person's failure to appear).
79. [S.L. 2011-412 \(H 335\)](#): **Changes to sentencing, corrections, and other legislation.** The act makes the following revisions to legislation enacted earlier in the 2011 legislative session. Revisions that are primarily technical are not discussed. The act became law without the signature of the Governor,

who did not approve it within the allotted time.

- Section 2.1 of the act amends [S.L. 2011-62](#) (H 270) by restoring the language in G.S. 15A-1343(b)(2) that requires as a condition of regular probation that the defendant remain within the jurisdiction of the court unless permitted in writing by the court or probation officer; the substitute language enacted by S.L. 2011-62 is deleted. Section 2.2 makes all of the changes in S.L. 2011-62 effective for offenses committed on or after December 1, 2011, except for the repeal of G.S. 15A-1344(g) (involving the tolling of probation), which remains effective for people placed on probation on or after December 1, 2011.
- Section 2.3(a) through (c) of the act clarifies one of the new requirements that a court or probation officer may impose as part of a community or intermediate punishment. The Justice Reinvestment Act, [S.L. 2011-192](#) (H 642), as amended by [S.L. 2011-391](#) (H 22), authorized the sentencing judge, in new G.S. 15A-1343(a1)(3), to impose as a condition of community or intermediate punishment up to six days of confinement per month during any three months of the period of probation. Probation officers were given similar delegated authority in new G.S. 15A-1343.2(e)(5) and (f)(6). The act clarifies that for defendants on probation for multiple judgments, these confinement periods must run concurrently and may not total more than six days per month. The changes are effective for offenses committed on or after December 1, 2011, the same effective date as for the new statutes.
- Section 2.3(d) of the act amends G.S. 15A-1344(d2), added by the Justice Reinvestment Act to authorize a court, in response to a violation of probation, to impose a 90-day period of confinement for a defendant under supervision for a felony conviction and up to 90 days for a defendant under supervision for a misdemeanor. The amended statute provides that if the defendant is arrested for a probation violation and confined pending a hearing, the prehearing confinement must be credited against the confinement the court imposes under the statute; any excess time must be credited against the activated sentence. The amended statute also provides that for defendants on probation for multiple offenses, confinement imposed under the statute must run concurrently on all cases. Confinement is in the correctional facility where the defendant would have served an active sentence. The changes are effective for probation violations on or after December 1, 2011, the same effective date as for the new statute.
- Section 2.5 of the act amends the effective date of G.S. 15A-1343(b)(3a), making it applicable to offenses committed on or after December 1, 2011. The statute, added by the Justice Reinvestment Act, makes “not absconding” a regular condition of probation.
- Section 2.7 amends G.S. 15A-1340.18, added by the Justice Reinvestment Act to create advanced supervised release (ASR). The amended statute clarifies that the court, in its discretion at sentencing and without objection from the prosecutor, may order the Department of Correction to admit a defendant to the ASR program (was, may include risk reduction incentives in sentencing the defendant). The amended statute states that the Department must admit to the ASR program only those defendants for which the court in its sentencing judgment ordered ASR. The ASR provisions continue to be effective for people who enter a plea or are found guilty on or after January 1, 2012.
- Section 3.1 repeals G.S. 68-25(b1), enacted by [S.L. 2011-313](#) (S 602), which made it a Class 3

misdemeanor for a person who owns or operates a commercial poultry operation to permit the commercial operation's fowl to run at large on adjoining property. The section leaves in place the new provision making it a Class 3 misdemeanor for a person to permit domestic fowl to run at large on the lands of a commercial poultry operation of another.

- Section 3.2 modifies the effective dates for the restrictions on limited learner's permits and provisional licenses in amended G.S. 20-11(d), (e), and (f), enacted by [S.L. 2011-385](#) (S 636). The new effective dates are October 1, 2011, and January 1, 2012, depending on the type of restriction and permit or license.
- Effective October 15, 2011, Section 4.1 of the act adds G.S. 58-71-200 to require the Administrative Office of the Courts (AOC) to provide professional bondsmen, surety bondsmen, and runners access to search criminal records in the AOC's real-time criminal information system. Under the new statute, the AOC may charge an initial setup fee, equivalent to the fee for government agencies, for establishing access to the system; however, record searches thereafter are at no charge to the bondsman or runner. Subsection (h) of G.S. 58-71-200 makes various violations a Class H felony. For example, a bondsman or runner authorized to access the AOC system may not allow another person to use that access; nor may a bondsman or runner distribute information obtained from the AOC system for any reason not directly related to evaluating bail for the individual for whom the information is obtained.
- Section 4.2 of the act amends G.S. 15A-544(d)(4), amended earlier in the session by [S.L. 2011-377](#) (H 649), to provide that if the district attorney and board of education do not file a timely objection to a motion to set aside a bail bond forfeiture, the clerk must enter an order setting aside the forfeiture "regardless of the basis for relief asserted in the motion, the evidence attached, or the absence of either." For a further analysis of the history of this provision, see the discussion of S.L. 2011-377, above.