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Police Law Bulletin

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2011 Legislation Affecting Criminal Law and Procedure

Below are brief summaries of selected legislation affecting criminal law and procedure that were enacted during the 2011 legislative session. For details about the bills summarized below, please review the actual legislation. Copies are available on the General Assembly's website: go to www.ncga.state.nc.us; click on Go in the Find a Bill box at the top of the page; insert the bill number, for example s912 or h2098; click the Look Up box; then click on the title of the bill located at the top of the screen.

Session Law 2011-2 (House Bill 18)
Clarification of Effective Date of Law Authorizing Restoration of Firearms Rights

S.L. 2010-108 (H 126) allowed people convicted of nonviolent felonies to apply for restoration of the right to possess firearms and created an exception from firearms restrictions for white collar felony convictions. The act contained an effective date clause standard in criminal law legislation i.e. that the act applied to offenses committed on or after February 1, 2011. This language created some uncertainty as to whether the restoration procedures and exceptions applied to a person who committed an offense before this date. This bill clarifies that the restoration procedures and exceptions take effect February 1, 2011 and can be utilized by any qualifying felon regardless of whether the actual offense date was before or after February 1st.

Effective: March 2, 2011

Session Law 2011-6 (House Bill 3)
Good Faith Exception to Exclusionary Rule For Violations of State Law

G.S. §15A-974 required that evidence be suppressed if it was obtained as a result of a substantial violation of Chapter 15A (the criminal procedure statutes). G.S. §15A-974 is amended to include a good faith exception to the exclusionary rule so that evidence shall no longer be suppressed for

a substantial violation of Chapter 15A if the person committing the violation acted under a "objectively reasonable, good faith belief" that the actions were lawful.

Note that there is still no good faith exception to the exclusionary rule for constitutional (as opposed to statutory) violations. In 1988, the North Carolina Supreme Court decided *State v. Carter*, 322 N.C. 709, in which it held that the good faith exception to the exclusionary rule adopted by the United States Supreme Court for certain constitutional violations does not exist under our state constitution. In this act, the General Assembly requested that the North Carolina Supreme Court reconsider and overrule this decision.

G.S. §15A-974 was also amended to require a court, when determining whether evidence must be suppressed for a violation of the United States Constitution, the North Carolina Constitution, or Chapter 15A of the North Carolina General Statutes, to make findings of fact and conclusions of law.

Effective: July 1, 2001 (trials and hearings commencing on or after this date)

Session Law 2011-12 (Senate Bill 7)
Controlled Substance Offenses

Additional controlled substances. G.S. §90-89(5) is amended to include three new substances as Schedule I controlled substances: 4-methylmethcathinone (also known as mephedrone); 3,4-Methylenedioxypyrovalerone (also known as MDPV); and a compound, other than buproprion, that is structurally derived from 2-amino-1-phenyl-1-propanone by modification in one of the specified ways. G.S. §90-94 is amended to add synthetic cannabinoids (as defined in new subsection (3), as a Schedule VI controlled substance.

New controlled substance offenses. Possession of any Schedule I controlled substance remains a Class I felony except that G.S. §90-95(d)(1) is amended so that if the Schedule I controlled substance is MDPV and the quantity is 1 gram or less, the violation is punishable as a Class 1 misdemeanor. G.S. §90-95(d)(4) is amended so that possession of synthetic cannabinoids or any mixture containing that substance is classified as follows: 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. The sale of a Schedule VI controlled substance remains a Class H felony; the manufacture, delivery or possession with the intent to manufacture, sell or deliver a Schedule VI controlled substance remains a Class I felony. However, G.S. §90-95(b)(2) is amended so that transfer of less than 2.5 grams of synthetic cannabinoids or any mixture containing such substance for no renumeration 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 grams, but less than 200, a Class F felony with a mandatory prison term of 70 to 84 months and a minimum $50,000 fine; for 200 or more grams, but less than 400, 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 §90-95(h)(1a) creates the offense of trafficking in synthetic cannabinoids, classified and punishable as follows based on dosage units (a "dosage unit" is defined as 3 grams of the substance or any mixture of the substance): for more than 50 but 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 dosage units, but less than 1250, 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, but less than 3750, 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.

Effective: June 1, 2011

Session Law 2011-19 (House Bill 27)
The Forensics Sciences Act

The Forensics Sciences Act of 2011 adds and modifies several statutes regarding the State Bureau of Investigation (SBI) Laboratory and forensic testing.

Advisory board. New G.S. 114-16.1 establishes a sixteen-member North Carolina Forensic Science Advisory Board within the Department of Justice. The Board 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, etc. The new Advisory Board may review State Crime Lab operations and make recommendations regarding: new scientific programs, protocols and methods of testing; plans for implementing new programs, and improving or eliminating existing programs; guidelines for presenting test results in court; and qualification standards for Lab scientists. In addition, upon the request of the Lab Director, the Board shall review analytical work, reports and conclusions of scientists employed by the Lab.

Studies and protocols on bias and error. An uncodified section of this act (that is, a provision that will not appear in the General Statutes but still has the same 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. Based on the results of these studies, the State Crime Lab should develop standard operating procedures to minimize such risks.

Professional certification. Another uncodified section of this act requires forensic science professionals at the State Crime Lab to obtain individual certification consistent with international and ISO standards no later than June 1, 2012, unless no such certification is available.

Ombudsman. Another uncodified section of the act creates, effective July 11, 2011, the position of ombudsman in the State Crime Lab. 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 defense counsel, prosecutorial agencies, law enforcement agencies, and the general public.

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 into evidence without the testimony of the analyst if certain procedures are followed. The act amends this statute to provide that a forensic analysis will be admissible under the statute only if it is performed by a lab that meets certain specified accreditation standards. The act makes similar changes to G.S. §20-139.1 (c2) regarding the admissibility of a chemical analysis of blood or urine without the testimony of the analyst.

Discovery. G.S. §15A-903(a)(1) requires the State to make available to the defendant the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. The term "file" has included the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant. This statute is amended so that the definition of "file" also includes, when 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…including but not limited to preliminary test or screening results and bench notes." G.S. §15A-903(c) is amended to require all public and private entities, as opposed to just law enforcement or prosecutorial agencies, 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 subsection (d) is added to G.S. §15A-903 making it a Class H felony for a person to willfully omit or misrepresent evidence or information required to be disclosed pursuant to subsection (a)(1) of the statute, or required to be provided to the State pursuant to subsection (c) of the statute. New subsection (d) also makes it a Class 1 misdemeanor for any person to willfully omit or misrepresent evidence or information required to be disclosed pursuant to any other section of the statute.

Effective: March 31, 2001 unless otherwise noted above

Session Law 2011-22 (House Bill 29)
Retrieval of Killed or Wounded Big Game Animal

Amends G.S. §113-291.1, which regulates the taking of wild animals and birds, to permit the retrieval of a big game animal within one-half hour after sunset and 11:00 p.m. under the following conditions: 1. the animal was killed or wounded during authorized hunting hours; 2. a portable light source may be used; 3. a single dog on a leash may be used; 4. the animal may be "dispatched," meaning it may be quickly and humanely killed if wounded to prevent further suffering, using only a .22-caliber rimfire pistol, archery equipment, or other handgun lawful for

that hunting season; and 5. pursuit and retrieval may not be accomplished using a motorized vehicle.

Effective: October 1, 2011

Session Law 2011-37 (House Bill 59)
Prohibition Against Certifying Sex Offenders as EMTs

Amends G.S. §131E-159 by creating a new subsection (h) which prohibits any person who is required to register as a sex offender to be granted EMT credentials. The statute does not require revocation of existing credentials, but prohibits renewal of them.

Effective: April 12, 2011

Session Law 2011-56 (Senate Bill 406)
Repeal of Permit Requirement for Crossbow

Revises G.S. §14-402 to eliminate the prohibition on selling, giving away, transferring, purchasing or receiving a crossbow without a permit. Also repeals G.S. §14-406.1 which set forth the procedures for manufacturers, wholesale dealers, and retailers to obtain a permit for the purchase and receipt of crossbows.

Effective: April 20, 2011

Session Law 2011-60 (House Bill 215)
The Unborn Victims of Violence Act/Ethen's law

Adds new Article 6A, "Unborn Victims" to G.S. Chapter 14.

Creates G.S. §14-23.1 which defines an "unborn child" as a member of the species homo sapiens, at any stage of development, who is carried in the womb.

Adds new G.S. §14-23.2 which creates the offense of murder of an unborn child when a person does any of the following: 1. willfully and maliciously commits an act with the intent to cause the death of an unborn child; 2. causes the death of an unborn child in perpetration or attempted perpetration of any of the criminal offenses set forth under G.S. §14-17 (first and second degree murder) or; 3. commits an act causing the death of an unborn child that is inherently dangerous to human life and is done so recklessly and wantonly that it reflects a disregard of life. Violation of the offense under either of the first two circumstances is a Class A felony punishable by life imprisonment without parole; violation of the offense under the last circumstance subjects the defendant to the same sentence as a conviction of second degree murder.

Adds new G.S. §14-23.3 which creates the offense of voluntary manslaughter of an unborn child when a person causes the death of an unborn child by an act that would be voluntary

manslaughter if it resulted in the death of the mother. A person who commits this offense is guilty of a Class D felony.

Adds new G.S. §14-23.4 which creates the offense of involuntary manslaughter of an unborn child when a 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. A person who commits this offense is guilty of a Class F felony.

Adds new G.S. §14-23.5 which creates the offense of assault inflicting serious bodily injury on an unborn child when a person commits a battery on the mother of the unborn child and the child is subsequently born alive but, as a result of the battery, suffered serious bodily injury. For purposes of this section, "serious bodily injury" is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization, or causes the birth of the unborn child prior to 37-weeks gestation if the child weighs 2500 grams or less. A person who commits this offense is guilty of a Class F felony.

Adds new G.S. §14-23.6 which creates the offense of battery on an unborn child when a person commits a battery on a pregnant woman. This is a lesser included offense of G.S. §14-23.5 and is punishable as a Class A1 misdemeanor.

A uncodified provision of 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. §14-23.7 contains exceptions so that the new article is not intended to permit prosecution of: a lawful abortion; diagnostic testing or therapeutic treatment pursuant to usual and customary standards of medical practice; and acts by a pregnant woman, including acts resulting in miscarriage or stillbirth. An uncodified provision of the act states that the act shall not impose criminal liability on an expectant mother who is the victim of acts of domestic violence that cause injury or death to her unborn child.

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 an unborn child, any other 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.

Effective: December 1, 2011

Session Law 2011-61 (House Bill 219)
Name Change by Sex Offender

Amends G.S. §14-208.7(b) to require a person subject to the sex offender registration requirements, at the time of initial registration, to indicate his or her name, as well as any aliases, he or she was using at the time he or she was convicted of the offense that requires registration.

Amends §14-208.9 to require a registrant who changes his or her name to report, within three business days, such change to the registering sheriff.

Amends §14-208.9A(a)(3) to require a registrant, when periodically re-verifying his or her registration information, to notify the sheriff of any new or different name.

Adds new subsection (4a) to G.S. §14-208.14 to require 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.

Effective: December 1, 2011

Session Law 2011-62 (House Bill 270) as amended by Session Law 2011-412 (House Bill 335)
Changes to Conditions of Probation

Amends the regular conditions of probation found in G.S. §15A-1343(b) as follows:

It deletes subsection (11) which required the probationer, at a time designated by the probation officer, to visit with the probation officer at a facility maintained by the Division of Prisons;

It omits from subsection (13), which concerns warrantless searches, the statement, "Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual; cost of drug screening and drug testing, if the results are positive." It adds subsection (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. It further provides that the probationer may be required to reimburse the Department of Correction for the costs associated with a positive test.

The act also authorizes additional special conditions of probation by amending G.S. §15A-1343(b1) as follows:

New subsection (9b) authorizes a prohibition against knowingly associating with any known street gang members, knowingly being present at or frequenting any place or location where street gangs gather or where street gang activity is known to occur, wearing clothes, jewelry, signs, symbols, or any paraphernalia readily identifiable as associated with or used by a street

gang, or initiating or participating in any contact with any individual who was or may be a witness against or victim of the defendant or the defendant's street gang. Street gang is defined in G.S. §14-50.16(b);

New subsection (9c) authorizes a requirement that the probationer participate in any Project Safe Neighborhood activities as directed by his or her probation officer.

Repeals G.S. §15A-1344(g) so that the probation statutes no longer contain any tolling provisions for probationers charged with new crimes. Therefore, the period of probation continues to run during the pendency of new criminal charges.

Effective: December 1, 2011

Session Law 2011-63 (House Bill 316)
Jurisdiction of General Assembly Special Police

Amends G.S. §120-32.2 to give General Assembly special police statewide jurisdiction when performing specified functions.

Effective: May 3, 2011

Session Law 2011-64 (Senate Bill 49)
Increased Penalty for Speeding in School Zone

Amends G.S. §20-141 and G.S. §20-141.1 to increase the minimum fine for speeding in a school zone from $25. to $250.

Effective: May 3, 2011

Session Law 2011-68 (House Bill 407)
Modification of Helmet Requirement For ATV Use

Revises G.S. §20-171.19 to require that all persons operating an ATV on a public street or public vehicular area, and all persons under 18 operating an ATV off of a public street, highway or public vehicular area, wear a safety helmet and eye protection. Previously, this statute required all persons to wear a helmet and eye protection while operating an ATV during either on- or off-road use. G.S. §20-171.22(c) is amended so that it continues to allow persons 16 years of age or older to operate ATVs without helmets or eye protection on ocean beach areas where ATV use is permitted.

Effective: October 1, 2011

Session Law 2011-95 (House Bill 222)
Electric Vehicles In Carpool Lanes

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.

Effective: May 26, 2011

Session Law 2011-119 (Senate Bill 16)
Misdemeanor Death By Vehicle Made Implied Consent Offense; Mandatory Blood Tests In Certain Circumstances

Amends G.S. §20-16.2(a1) to designate a violation of G.S. §20-141.4(a2), misdemeanor death by vehicle, as an implied consent offense. Misdemeanor death by vehicle, in essence, involves unintentionally causing the death of another person by the commission of a traffic violation *other* than impaired driving.

G.S. §20-139.1(b5), which concerns subsequent tests for an impairing substance when a person is charged with an implied-consent offense, is also amended. 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. In addition, if a person willfully refuses to provide a blood sample under G.S. §20-139.1(b5), and the person is charged with a violation of G.S. §20-141.4, then a law enforcement officer with probable cause to believe the offense involved impaired driving or was an alcohol-related offense subject to the implied-consent procedures in G.S. §20-16.2 must seek a warrant to obtain a blood sample. Failure to obtain such a blood sample though is not grounds for dismissal and is not an appealable issue.

Effective: December 1, 2011

Session Law 2011-190 (Senate Bill 268)
Intimidating Witnesses

Amends G.S. 14-226(a) to increase the punishment for intimidating a witness, or attempting to intimidate a witness, from a Class H felony to a Class G felony.

Effective: December 1, 2011

Session Law 2011-191 (House Bill 49)
Increased Punishment for DWI

Known as "Laura's Law," the bill creates a new, higher level of punishment for impaired driving, called "aggravated level one," and changes some provisions for existing punishment levels.

Amends G.S. §20-179(c) to require a judge to impose an aggravated level one punishment when a person has been convicted of impaired driving and three or more grossly aggravating factors apply.

Amends G.S. §20-179(f3) to describe the punishment requirements for aggravated level one: (1) a fine of up to $1,000; (2) a sentence of imprisonment of a minimum of 12 months and a maximum of 36 months; and (3) ineligibility for parole. Since such defendants are not eligible for parole, those who receive an active sentence of imprisonment must be released four months before the end of the maximum imposed term of imprisonment. 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 may be suspended only if: (1) a condition of special probation is imposed requiring the defendant to serve 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.

Amends G.S. §20-19(e) to provide for a permanent license revocation for a person sentenced under the new aggravated level one. If the person's license is nonetheless restored, G.S. §20-17.8 requires an ignition interlock.

For defendants sentenced to a level one or two punishment for impaired driving, G.S. §20-179(h1) is amended to change the period a defendant may be required to abstain from alcohol as verified by a continuous alcohol monitoring system from 60 days, to now a minimum of 30 days to a maximum of the term of probation. Also, eliminates 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 and two punishments. Repeals §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.

New G.S. §7A-304(a)(1) 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.

New G.S. §15A-534(i) authorizes a judicial official to impose, as a condition of pretrial release, abstinence from alcohol as verified by a continuous alcohol monitoring system on any defendant

charged with an impaired driving offense who has a prior conviction for such an offense within the past seven years.

Effective: December 1, 2011

Session Law 2011-192 (House Bill 642) as amended by Session Law 2011-391 (House Bill 22) and Session Law 2011-412 (House Bill 335)
Justice Reinvestment Act

The following is based upon a summary of the act by School of Government faculty members John Rubin and Jamie Markham. *See* *The Justice Reinvestment Act: An Overview*, posting to North Carolina Criminal Law: UNC School of Government Blog (June 30, 2011) by Jamie Markham.

Narrowing of distinction between community and intermediate punishment. The act retains the community/intermediate/active ("C/I/A") framework in the structured sentencing grids, but it redefines the meaning of community and intermediate punishments. Amended G.S. §15A-1340.11 and new G.S. §15A-1343 provide the following: 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.

Authority delegated to probation officers, including authority to impose jail time. Pursuant to amended G.S. §15A-1343.2, 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 may 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.

Repeal of intensive supervision and other intermediate conditions. The act amends G.S. §15A-1343 and G.S. §15A-1340.11 to repeal 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."

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." A similar provision is added in new §G.S. 15A-1368.4(e)(7a) for post-release supervisees.

Limitations on judge's authority to revoke probation. 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 sentence (felony or misdemeanor) is less than 90 days, then any term of confinement ordered under new G.S. §15A-1344(d2) must be for the remaining period of the sentence.

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. 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, 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.

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) 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.

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.

Effective: December 1, 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.

Creation of advanced supervised release. Pursuant to new G.S. §15A-1340.18 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" (ASR). 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). The statute provides that the court, in its discretion and without objection from the prosecutor, may include these risk reduction incentives when sentencing an eligible defendant.

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.

Effective: January 1, 2012

Session Law 2011-193 (House Bill 227)
Disturbing Human Remains

Amends G.S. §14-401.22 to create the following new offenses:

- Willfully disturbing, vandalizing or desecrating human remains is a Class I felony. Exempted from this provision are first responders or others providing medical care; acts committed as part of scientific or medical research, treatment or diagnosis; acts by funeral directors or embalmers consistent with standard professional practices; acts by a professional archeologist pursuant to state law; acts committed for other lawful purposes.
- Committing or attempting to commit an act of sexual penetration upon human remains is a Class I felony.
- Attempting to conceal evidence of the death of another by knowingly and willfully dismembering or destroying human remains is a Class H felony.
- Attempting to conceal evidence of the death of another by knowingly and willfully dismembering or destroying human remains knowing or having reason to know that the remains are of a person who did not die of natural causes is a Class D felony.

Effective: December 1, 2011

Session Law 2011-194 (Senate Bill 31)
Unauthorized Practice of Medicine

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.

Effective: December 1, 2011

Session Law 2011-216 (House Bill 381)
Stopping Patterns at Vehicle Checkpoints

Amends G.S. §20-16.3A to prohibit a law enforcement agency from basing a checkpoint stopping pattern on a particular vehicle type other than a commercial motor vehicle.

Effective: December 1, 2011

Session Law 2011-231 (House Bill 762)
Landowner Protection Act

Amends G.S. §14-159.6 to make it a Class 2 misdemeanor for a person to willfully enter posted lands or waters of another to hunt, fish or trap without written permission, dated within the past 12 months, of the landland, lessor, or his agent. Written permission must be carried on one's person and presented upon request of any law enforcement officer. Also amends G.S. §14-159.7 to not only allow the owner or lessee of property to post such property with notices, signs, or posters, but to also allow posting by purple paint marks on tress or posts around the area to be posted. Each paint mark must be a vertical line at least 8" in length, the bottom of the line must be no more than 3-5 feet from the base of the tree or post, the marks can be no more than 100 yards apart, and the markings must be readily visible to any person approaching the property.

Effective: October 1, 2011

Session Law 2011-240 (House Bill 12)
Increased Regulation of Pseudoephedrine Products

Creates new G.S. §90-113.52A requiring retailers, before completing a sale of a product containing pseudoephedrine, to electronically submit certain required information to the National Precursor Log Exchange (NPLEx). No sale is allowed if the system generates a stop alert. If there is a mechanical failure of the system, the sale may occur, but the retailer must record that the sale was made without submission to the NPLEx system. Records from the system are sent weekly to the State Bureau of Investigation. G.S. §90-113.56 is amended so that a retailer who willfully and knowingly violates new G.S. §90-113.52A is guilty of a Class A1 misdemeanor for the first offense, and a Class I felony for a second or subsequent offense; a purchaser or employee who willfully and knowingly violates the statute is guilty of a Class 1 misdemeanor for the first offense, a Class A1 misdemeanor for a second offense, and a Class I felony for a third or subsequent offense.

Effective: January 1, 2012

Session Law 2011-245 (Senate Bill 311)
Warrantless Arrest for Violations of Pretrial Release Order

Amends G.S. 15A-401(b) to allow the warrantless arrest of persons who have violated a pretrial release order.

Effective: December 1, 2011

Session Law 2011-248 (Senate Bill 394)
Principals Required to Report Certain Acts to Law Enforcement

Amends G.S. §115C-288 to require a principal with personal knowledge, a reasonable belief, or actual notice from school personnel that certain acts occurred on school property to immediately report the act to the appropriate local law enforcement agency. Acts to be reported are: assault resulting in serious personal injury; sexual assault; sexual offense; rape; kidnapping; indecent liberties with a minor; assault involving the use of a weapon; possession of a firearm in violation of the law; or possession of a controlled substance.

Effective: June 16, 2011

Session Law 2011-250 (House Bill 408)
Open-File Discovery

Amends G.S. §15A-903 to shift the burden to law enforcement to provide to the prosecutor, on a timely basis, a copy of their complete investigative files. Production is no longer dependent upon a request from the State. Any person who willfully omits or misrepresents evidence or information required to be disclosed shall be guilty of a Class H felony. Any person who willfully omits or misrepresents evidence or information pursuant to voluntary discovery shall be guilty of a Class 1 misdemeanor. G.S. §15A-904 is amended to clarify that the State is not required to disclose the identity of an individual providing information to CrimeStoppers, nor a Victim Impact Statement submitted to the State pursuant to the Victim's' Rights Amendment.

Effective: December 1, 2011

Session Law 2011-254 (House Bill 629)
Substance Abuse and Other Treatment

Amends G.S. §15A-1343(b3) to provide that a defendant ordered, as a special condition of probation, 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. If the screening indicates chemical dependency, the court must order an assessment to determine the appropriate level of treatment. Such screenings are already required of defendants ordered to submit to a period of residential treatment in the Drug Alcohol Recovery Treatment program (DART).

Amends G.S. §15A-1343(b1) so that notwithstanding G.S. §15A-1344(e), which limits the period of special probation, a defendant may be required to participate in medical or psychiatric treatment, including remaining in a specified institution, for the duration of the treatment regardless of the length of the suspended sentence imposed.

Effective: December 1, 2011

Session Law 2011-267 (Senate Bill 272)
Crime Victims Compensation

Recoveries from "collateral sources" reduce the amount of compensation a crime victim may receive under the Crime Victim's Compensation Act. G.S. §15B-2(3) is amended to add to the definition of a "collateral source" a charitable gift or donation by a third party, including a charity care write-off of expenses by a medical provider.

Amends G.S. §15B-2(7) to limit compensation for a dependant's economic loss to a maximum of $300 per week for 26 weeks commencing from the date of injury.

Amends G.S. §15B-8.1(b) to provide that all personal information 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.

Amends G.S. §15B-14(b) to provide that, upon the request of the Attorney General, the proceedings on a claim for compensation shall (rather than "may") be suspended pending disposition of a criminal prosecution that has commenced or is imminent.

Effective: July 1, 2011

Session Law 2011-268 (House Bill 650)
Various Revisions Regarding the Right to Own, Possess or Cary a Firearm

Repeals G.S. §14-51.1, Use of deadly force against an intruder, and replaces it with new §14-51.2 and §14-51.3 summarized below.

Creates §G.S. 14-51.2 which provides that the lawful occupant of a home, motor vehicle or workplace is presumed to have held a reasonable fear of imminent death or serious bodily injury to himself or another when using deadly force against another if: the person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcefully entered a home, motor vehicle or workplace, or that person had removed or was attempting to remove another against that person's will from the home, motor vehicle or workplace; and the person who used defensive force knew or had reason to believe that an unlawful and forcible entry or act was occurring or had occurred. The presumption does not apply if any of the following circumstances exist: the person against whom the defensive force was used had a right to be in the home, motor vehicle or workplace; the person sought to be removed from the home, motor vehicle or workplace is a child, grandchild or is otherwise in the lawful custody of the person against whom defensive force was used; the person who uses defensive force was engaged in, or attempting to escape from, or using the home, motor vehicle or workplace to further any criminal offense involving the use or threat of physical force against any individual; the person against whom the defensive force was used is a law enforcement officer or bail bondsman who properly identified him or herself in accordance with the law and who was performing his or her official duties; or the person against whom the defensive force

was used had discontinued all efforts to enter the home, motor vehicle or workplace and had exited the home, motor vehicle or workplace. A person who uses force as permitted by the statute is immune from civil or criminal liability.

Adds G.S. §14-51.3 to provide that a person is justified in using non-deadly force against another when and to the extent the person reasonably believes such force is necessary to defend himself or another against the imminent use of non-deadly force. A person is justified in using deadly force if he or she reasonably believes such force is necessary to prevent imminent death or great bodily injury to himself or another, or under the circumstances permitted by G.S. §14-51.2. A person who uses force as permitted by the statute is immune from civil or criminal liability.

Creates G.S. §14-51.4 providing that the justification described in G.S. §14-51.2 and G.S. §14-51.3 is not available to a person who used defensive force and who: was attempting to commit, committing, or escaping after the commission of a felony; or, with limited exceptions, initially provoked the use of force.

Amends G.S. §14-269 to allow the following persons to carry a firearm concealed about their person:

- a district attorney, assistant district attorney or investigator employed by the office of the district attorney and who has a ccw permit; provided, however, that such persons may not carry a concealed weapon into a courtroom, while consuming alcohol or an unlawful controlled substance, or while alcohol or an unlawful controlled substance remains in the person's body. The weapon must be secured in a locked compartment when not on the person;
- any person that is a qualified retired law enforcement officer as defined in G.S. §14-415.10, holds a ccw permit, and is certified by the North Carolina Criminal Justice Education and Training Standards Commission pursuant to G.S. §14-415.26;
- detention personnel or correctional officers who park a vehicle in a space authorized for their use in the course of their duties may transport a firearm concealed to that space and store the firearm in the parked vehicle provided the firearm is in a closed compartment within the locked vehicle, or the firearm is in a locked container securely affixed to the vehicle.

Amends G.S. §14-269.2 to require that a person "knowingly" possess a firearm on educational property for possession under the statute to be unlawful.

Amends §G.S 14-269.4 and §14-415.11 to allow a person with a ccw permit to possess a concealed firearm in or on the grounds of the State Capitol, the Executive Mansion, the Western Residence of the Governor, or any courthouse as long as the firearm is in a closed compartment or container within the person's locked vehicle or in a locked container that is securely affixed to the person's vehicle.

Amends G.S. §14-269.7 to require that a minor who possesses a handgun do so "willfully and intentionally" for possession under the statute to be unlawful. The amendment also increases the punishment for this offense from a Class 2 to a Class 1 misdemeanor.

Amends G.S. §14-269.8 and G.S. §50B-3.1 so that it is no longer unlawful for a person subject to the firearms prohibition in a domestic violence protective order to own a firearm. It is still unlawful for such a person to possess, purchase or receive a firearm.

Amends G.S. §14-288.8 (Manufacture, assembly, possession, storage, transportation, sale, purchase, delivery or acquisition of weapons of mass death and destruction) and §14-409 (Machine guns and other like weapons) to exempt from their prohibitions persons authorized to possess or own such weapons pursuant to federal law.

Amends G.S. §14-404(d) to exempt a law enforcement officer from the pistol purchase permit requirements if the officer identifies himself as such to the vendor or donor, and provides any of the following: a letter signed by the officer's supervisor or superior officer stating the officer is authorized by law to carry a firearm; a current photo id issued by the officer's employer; a current photo id issued by a State agency identifying the individual as a law enforcement officer; or a current id card issued by the officer's employer along with a current form of photo id. Previously, the statute required that an officer identify himself as a law enforcement officer to the vendor or donor and state that the purpose of the purchase was directly related to the officer's official duties.

Creates new G.S. §14-408.1 making it a Class F felony for a person to knowingly solicit the transfer of a firearm or ammunition under circumstances that the person knows would violate State or federal laws, or to provide to a licensed dealer or private seller materially false information with the intent to deceive the dealer or seller about the legality of the transfer of a firearm or ammunition. The statute does not apply to law enforcement officers acting in their official capacity or to persons acting at the direction of law enforcement.

Adds subsection (c1) to G.S. §14-415.11 to allow a person with a ccw permit to carry a concealed handgun on the grounds or waters of State Park.

Amends recodified section (c2) of G.S. §14-415.11 to provide that it is not unlawful for a person, with or without a ccw permit, to carry a concealed handgun while consuming alcohol, or while alcohol remains in the person's body, if the person is on his or her own property.

Adds subsection (c3) to G.S. §14-415.11 to allow a person to carry any firearm openly, or to carry concealed with a ccw permit, at any State-owned rest area, rest stop, or hunting and fishing reservation.

Amends G.S. §14-415.21 to reduce the penalty for second or subsequent offenses of failing to carry an issued ccw permit, or failing to make the necessary disclosures to law enforcement, from a Class 2 misdemeanor to an infraction.

Creates new G.S. §14-415.27, and amends G.S. §14-415.11 accordingly, to allow a district attorney, assistant district attorney or investigator of that office to carry concealed with a ccw permit in those places otherwise prohibited by G.S. §14-415.11 (educational property; assemblies

and establishments where alcoholic beverages are sold and consumed; the State Capitol Building and grounds; the Executive Mansion and grounds; the Western Residence of the Governor and grounds; court houses, excepting courtrooms; parades, funeral processions, picket lines or demonstrations upon private health care facilities or publicly owned places; law enforcement or correctional facilities; buildings housing only State or federal offices; offices of the State or federal government; financial institutions; property indicating carry concealed is prohibited)

Adds subsection (c1) to G.S. §120-32.1 to forbid the adoption of any rule prohibiting the transportation or storage of a firearm in a closed compartment or container within a locked vehicle or within a locked container securely affixed to a vehicle on State legislative grounds. Also allows a legislator or legislative employee parking a vehicle in a State-owned parking space leased or assigned to that person to transport a firearm to that parking space and store the firearm in the vehicle parked in the space provided the firearm is in a closed container or compartment within the locked vehicle, or the firearm is in a locked container securely affixed to the vehicle.

Effective: December 1, 2011

Session Law 2011-270 (Senate Bill 498) and Session Law 2011-282 (House Bill 736) Parental Choice Regarding Corporal Punishment

S.L. 2011-270 amended G.S. §115C-391(a)(5) to prohibit corporal punishment on any student (not just those with a disability) whose parent or guardian has stated in writing, on a form to be provided by the school, 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 of the 2011-2012 school year

Session Law 2011-271 (House Bill 427) Seizure of Motor Vehicle Used In Felony Speeding to Elude Arrest

Adds new subsections (g) through (j) to G.S. §20-141.5 to provide for the seizure and forfeiture of vehicles used in the commission of felony speeding to elude arrest.

If a person is arrested for felony speeding to elude arrest, the law enforcement agency shall seize the motor vehicle and deliver it to the sheriff of the county in which the offense was committed, or the vehicle shall be placed under the sheriff's constructive possession if delivery of actual possession is impractical. Unless otherwise provided by statute, the vehicle shall be held by the sheriff pending the trial of the person operating the motor vehicle and charged with felony speeding to elude arrest.

The statute mandates the release of the vehicle before trial if: 1. the owner executes a bond, with sufficient sureties, in an amount double the value of the vehicle, and conditioned on the return of the vehicle to the custody of the sheriff on the day of trial; 2. the felony speeding to elude arrest charge is dismissed; 3. the clerk of court determines that the owner is an "innocent owner;" 4. the

court, in its discretion, and upon such terms and conditions as it may prescribe, allows reclamation of the vehicle by a lienholder; or 5. the owner of the vehicle can establish to the satisfaction of the court that the defendant was an immediate member of the owner's family at the time of the offense, the defendant had no previous felony or misdemeanor convictions at the time of the offense, the defendant had no previous or pending violations of any provision of Chapter 20 during the three years prior to the time of the offense; and the defendant was under the age of 19 at the time of the offense.

The vehicle shall be returned to the owner after trial if: 1. the person operating the motor vehicle and charged with speeding to elude arrest is acquitted; 2. if the court, in its discretion, and upon such terms and conditions as it may prescribe, allows reclamation of the vehicle by a lienholder; or 3. the owner of the vehicle can establish to the satisfaction of the court that the defendant was an immediate member of the owner's family at the time of the offense, the defendant had no previous felony or misdemeanor convictions at the time of the offense, the defendant had no previous or pending violations of any provision of Chapter 20 during the three years prior to the time of the offense; and the defendant was under the age of 19 at the time of the offense.

Unless otherwise provided for above, upon conviction of the operator of the vehicle for felony speeding to elude arrest, the court shall order the sale of the vehicle at public auction in accordance with the procedures set forth in the statute.

Effective: December 1, 2011

Session Law 2011-277 (Senate Bill 135)
Use of Juvenile Record for Bond and Plea Decisions

G.S. §7B-3000(e) has permitted the use of a juvenile record for the purposes of pretrial release decisions and plea negotiations if: the criminal case involves a felony or a Class A1 misdemeanor committed before the defendant's 21st birthday; and the delinquency adjudication occurred within 18 months either before or after the defendant reached age 16. The statute is amended so that the delinquency adjudication only has to have occurred after the defendant reached age 13.

Effective: December 1, 2011

Session Law 2011-278 (Senate Bill 397)
Expunction of Nonviolent Felonies For Offenders Under Age 18

New G.S. §15A-145.4(a) defines a nonviolent felony as any felony that does fall within any of the following categories: 1. all A through G felonies; 2. felonies that include assault as an essential element of the offense; 3. a felony requiring registration as a sex offender; 4. a felony related to specified sex-related or stalking offenses; 5. any felony charged pursuant to Chapter 90 that involves methamphetamine, heroin, or possession with intent to sell or deliver or sale or delivery of cocaine; 6. felonies charged pursuant to specified statutes which relate to ethnic intimidation; 7. a felony charged pursuant to G.S. §14-401.16 (contaminating food to render one

mentally or physically incapacitated); or 8. a felony offense in which a commercial motor vehicle was used in its commission.

Subsection (b) provides that if the petitioner was convicted of multiple nonviolent felonies in the same session of court and none of the nonviolent felonies occurred after the person was charged and arrested for a nonviolent felony, the multiple nonviolent felony convictions will be treated as one nonviolent felony conviction for purposes of expunction under this statute.

Subsection (c) allows any person who was under the age of 18 at the time of commission of a nonviolent felony, and who has not previously been convicted of a felony or misdemeanor other than a traffic violation, to file a petition for expunction of the nonviolent felony from the person's record. The petition may not be filed earlier than 4 years after the date of conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The petitioner must have performed at least 100 hours of community service since the conviction, preferably related to the conviction. The petition must contain information specified in subsection (c) of the statute. The petition must be served on the district attorney who has 30 days to file an objection. The district attorney must use his or her best efforts to contact the victim before the expunction hearing.

Subsection (d) sets forth various steps that must be taken, as well as issues that must be considered, by the court prior to it rendering a decision. Subsection (e) sets forth the requirements that a court must find in order to grant the petitioner's expunction request. Subsections (f) through (h) describe the legal effect of the granting of an expunction petition, and the responsibilities of the agencies affected by the order.

G.S. §15A-151 is amended 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 these commissions to disclose expunged felony convictions. And, G.S. §17C-13 and §17E-12 are amended to allow these commissions access to the above referenced information, and further, authorizes them to deny, suspend or revoke a person's certification based solely upon conviction for a felony, whether or not expunged.

Effective: December 1, 2011

Session Law 2011-303 (House Bill 805)
Criminal Record Check as Condition of Obtaining Name Change

Amends G.S. §101-5 to require a person who applies to the clerk of superior court for a name change to provide to the clerk certain information, including the certified results of an official state and national criminal history record check. Upon 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.

Effective: June 24, 2011

Session Law 2011-307 (Senate Bill 684)
Changes in Maximum Sentence and Post-Release Supervision for Offenses Requiring Registration As A Sex Offender;

New G.S. §15A-1340.17(f) adds 60 months to the maximum term of imprisonment for Class B1 through E felonies which require registration as a sex offender. This 60 month increase corresponds to the 60 month period of post-release supervision for Class B1 through e felonies which require registration as a sex offender. The additional 60 months is in lieu of the 9 months added to the maximum term of imprisonment under current law for all Class B1 through E felonies and the additional 12 months required for all Class B1 through E felonies under the Justice Reinvestment Act.

Amended G.S. 15A-1368.2(a) provides that a person whose maximum sentence is increased by 60 months pursuant to new G.S. §15A-1340.17(f) must be released for post-release supervision 60 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 60 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 60 month increase does not apply to the additional offense.

Effective: December 1, 2011

Amends G.S. §15A-1368.2(b) to provide that a willful refusal to accept post-release supervision, or to comply with its terms, is punishable as contempt of court and may result in imprisonment for up to 30 days. A person 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. In addition, 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 five years of post-release supervision. These amended contempt provisions appear to apply to offenses committed before or after June 27, 2011 as long as the person is still on post-release supervision and commits the violation on or after that date.

Effective: June 27, 2011

This act also modifies S.L. 2011-19 (H 27), which was passed earlier in this legislative session, and which made changes to the SBI crime lab (now referred to as the State Crime Lab) and certain forensic procedures. The previously enacted bill required forensic science professionals at the State Crime Lab to obtain individual certification consistent with international and ISO standards by June 1, 2012, unless no certification is available. This act adds as an alternative that these professionals obtain certification within 18 months of the date the analyst becomes eligible to seek certification according to the standards of the certifying entity, or by June 1, 2012, whichever occurs later. Earlier S.L. 2011-19 (H27) also amended G.S. 8-58.20 and G.S. 20-

139.1(c2) to provide that for a forensic analysis to be admissible under those statutes, it must be conducted by a lab meeting revised accreditation standards. This act modifies those requirements so that they apply only to the State Crime Lab beginning March 31, 2011, and to all other laboratories conducting forensic or chemical analyses for admission in the courts of the State beginning October 1, 2012.

Effective: June 27, 2011 except accreditation standards for State Crime Lab which became effective March 31, 2011 and which apply to other laboratories on or after October 1, 2012

Session Law 2011-313 (Senate Bill 602) as amended by Session Law 2011-412 (House Bill 335)
Allowing Fowl to Run at Large

G.S. §68-25 has made it a Class 3 misdemeanor for a person to permit fowl to run at large, after having received notice of such running at large, on any other person's lands which are under cultivation or being used for garden or ornamental purposes. New subsections (b) is added to also make it a Class 3 misdemeanor to allow domestic fowl to run at large, after having received notice of such running at large, on the lands of another's commercial poultry operation.

Effective: December 1, 2011

Session Law 2011-321 (Senate Bill 98)
Transcripts or Altered Voice Reproductions of 911 Calls

Amends G.S. §132-1.4(c) so that, in order to protect the identity of a complaining witness, the contents of 911 and other emergency communications may be released pursuant to the public records laws in the form of a written transcript or altered voice reproduction.

Effective: June 27, 2011

Session Law 2011-325 (Senate Bill 144)
Regulation of Cash Converter Businesses

Amends G.S. §91A-3 to define "cash converter" as a person engaged in the business of purchasing goods from the public for cash at a permanently located retail store who holds himself or herself out to the public by signs, advertising or other methods as engaging in that business. The term does not include:

- pawnbrokers;
- persons whose goods purchases are made directly from manufacturers or wholesalers for their inventories;
- precious metal dealers, to the extent that their transactions are already governed under Article 25 of Chapter 66 of the General Statutes;
- purchases by persons primarily in the business of obtaining from the public, either by purchase or exchange, used clothing, children's furniture, and children's products, provided the amount paid for the individual item purchased is less than $50.00;

- purchases by persons primarily in the business of obtaining from the public, either by purchase or exchange, sporting goods and sporting equipment, provided the amount paid for the individual item is less than $50.00.

Creates new G.S. §91A-7.1 requiring each cash converter to maintain consecutively numbered records of each cash purchase which includes the following information:

- a description of the property, including model and serial number if indicated on the property;
- the name, residence address, phone number and date of birth of the seller;
- the date of purchase;
- the type of identification and identification number accepted from the seller;
- a description of the seller, including approximate height, weight, sex and race;
- the purchase price; and
- the statement that "THE SELLER OF THIS ITEM ATTESTS THAT IT IS NOT STOLEN, HAS NO LIENS OR ENCUMBRANCES, AND IS THE SELLERS' TO SELL."

The seller must sign the record which also must be signed or initialed by the cash converter or any of its employees. The records shall be available for inspection and pickup each regular work day by the chief of police or his designee. The records may be electronically reported by transmission over the Internet or by fax in a manner approved by the chief of police.

Amends G.S. §91A-10 to prohibit a cash converter from purchasing from any person property which is known by the cash converter to be stolen, unless there is a written agreement with State or local law enforcement.

Effective: December 1, 2011

Session Law 2011-326 (Senate Bill 148)
Changes to Drug Schedules

Amends G.S. §90-89 to add the following to the list of Schedule I controlled substances: alpha-methyltryptamine, 5-methoxy-n-diisopropyltryptamine, n-benzylpiperazine, and 2.5-dimethoxy-4-(n)-propylthiophenethylamine. Amends G.S. §90-90 to add the following to the list of Schedule II controlled substances: lisdexamfetamine, including its salts, isomers, and salts of isomers, and tapentatol. Amends G.S. §90-91 to add the following to the list of Schedule III controlled substances: nandrolone decanoate.

Effective: June 27, 2011

Session Law 2011-329 (Senate Bill 241)
Level One DWI Sentence If Minor Or Disabled Person In Vehicle; Recording of Custodial Interrogations

G.S. §20-179 has required the existence of two grossly aggravating factors in order for a person to be sentenced to a Level One punishment. One of the grossly aggravating factors was driving by a defendant while a child under 16 was in the vehicle. The statute has been amended so that a person convicted of DWI must be sentenced to a Level One punishment if one of the grossly aggravating factors listed in amended subsection (c)(4) exists, or if two of the other grossly aggravating factors found in subsections (c)(1)-(3) exist. The grossly aggravating factors in subsection (c)(4) are driving by the defendant while a child under the age of 18, a person with a mental development of a child under 18, or a person with a physical disability preventing the unaided exit from the vehicle were in the vehicle at the time of the offense.

G.S. §15A-211 was originally enacted in 2007 as part of several innocence initiatives. It requires any law enforcement officer conducting a custodial interrogation, in a homicide investigation, at any place of detention to make an electronic recording of the interrogation in its entirety. The electronic recording could be either an audio or video recording. This statute is amended to require any law enforcement officer conducting a custodial interrogation at any place of detention to make an electronic recording of the interrogation in its entirety when the investigation is of a juvenile, or the investigation relates to any of the following crimes: a Class A, B1, or B2 felony; or a Class C felony of rape, sex offense, or assault with a deadly weapon with intent to kill inflicting serious injury. The electronic recording shall be both an audio and video recording whenever reasonably feasible.

Effective: December 1, 2011

Session Law 2011-349 (Senate Bill 474)
Photo ID Required For Certain Controlled Substances

Adds new G.S. §90-106.1 requiring pharmacies to obtain, prior to dispensing any Schedule II controlled substance or any of the Schedule III controlled substances listed in G.S. §90-91(d)(1-8), a driver's license, special identification card issued under G.S. §20-37.7, a military identification card, or a passport from the person seeking the controlled substance. Pharmacies must record and maintain for three years the name of the person seeking the controlled substance, the type of identification presented, and the identification number. This information shall be provided to individuals listed in G.S. §90-113.74(c) within 72 hours after a request.

Effective: March 1, 2012

Session Law 2011-356 (Senate Bill 762)
Assault Inflicting Physical Injury On Law Enforcement Officers and Others

Amends G.S. §14-34.7 by adding a new subsection (c) which makes it a Class I felony to assault a law enforcement, probation or parole officer in the discharge or attempted discharge of his or her duties if the assault inflicts "physical injury." Physical injury includes cuts, scrapes, bruises or other physical injury which does not constitute serious injury.

Amends G.S. §14-34.6 to make assault inflicting physical injury on a firefighter, emergency medical technician, medical responder, or emergency department personnel a Class I felony. If the statute is violated by a person who inflicts serious bodily injury, or who uses a deadly weapon other than a firearm, the offense is a Class H felony. An assault on these personnel that does not inflict physical injury is no longer covered by the statute. Therefore, unless the personnel are state or local government employees, an assault that does not inflict physical injury would be a Class 2 misdemeanor simple assault under G.S. §14-33(a); an assault that does not inflict physical injury but is with a deadly weapon would be a Class A1 misdemeanor under G.S. §14-33(c)(1).

Amends G.S. §14-288.9 to make assault inflicting physical injury on emergency personnel a Class I felony. An assault on these personnel that does not inflict physical injury is no longer covered by the statute.

Effective: December 1, 2011

Session Law 2011-361 (House Bill 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. The statute is amended to increase the penalty to at least $200. if the unsafe movement causes a motorcyclist to change or leave the travel lanes, and increases the penalty to at least $500. if the violation results in a crash causing property damage or personal injury to the motorcyclist or passenger.

Effective: December 1, 2011

Session Law 2011-369 (House Bill 432)
Taking Feral Swine

Creates new G.S. §113-29.12 which makes it unlawful to remove feral swine from a trap while the swine is still alive, and to transport the live swine after such removal. New G.S. §113-291.12

designates the acts of removal and transport as separate offenses and makes each a Class 2 misdemeanor.

Effective: October 1, 2011

Session Law 2011-381 (House Bill 662)
Tampering With Ignition Interlock System;
False Special Identification Cards;
Criminal History Checks for Restoration of Revoked License

Creates new G.S. §20-17.8A which makes it a Class 1 misdemeanor for any person to tamper with, circumvent, or attempt to circumvent an ignition interlock device required to be installed on a vehicle pursuant to an order of the court, statute, or condition for the individual to operate the vehicle for the purpose f avoiding or altering testing on the device, or to alter test results. Each act of tampering, circumvention or attempted circumvention is a separate violation.

Amends G.S. §20-7 to eliminate the requirement of different colored backgrounds or borders for license holders that are less than 21 years of age and those that are at least 21 years of age. Licenses that are issued to persons under 21 will continue to be printed in a vertical format and licenses that are issued to persons who are at least 21 will continue to be printed in a horizontal format.

Amends G.S. §20-30 to make the various false and fictitious provisions which apply to driver's licenses and learner's permits also applicable to special identification cards.

Adds new G.S. §114-19.31 to authorize the Department of Justice to provide the Division of Motor Vehicles with a criminal history for any applicant for restoration of a revoked driver's license.

Effective: December 1, 2011

Session Law 2011-385 (Senate Bill 636) as amended by Session Law 2011-412 (House Bill 335)
Provisional Driver's Licenses

Amends G.S. 20-11 to clarify that a limited provisional license holder may only drive to or from work or other specified activity, without supervision, if driving *directly* to or from such location.

Effective: October 1, 2011

Amends G.S. §20-11 to require that applicants for limited and full provisional licenses submit to DMV driving logs signed by a supervising driver. To obtain a limited provisional license, the applicant's driving log must list 60 hours of driving, at least 10 hours of which occurred at night. No more than 10 hours of driving per week may be counted. An applicant seeking a full provisional license must submit a log detailing 12 hours of driving, at least 6 hours of which occurred at night. If DMV has cause to believe that a driving log has been falsified, the applicant

must complete a new driving log and is not eligible to obtain the license for which he or she applied for six months.

In a further attempt to curb teenage unsafe driving, the act also requires the immediate revocation of a provisional license when the licensee is charged with a misdemeanor or felony motor vehicle offense that is defined as a criminal moving violation. A "criminal moving violation" is a violation of Part 9 or 10 of Article 3 of Chapter 20 that is punishable as a misdemeanor or felony offense. The term does not include offenses listed in G.S. §20-16(c) for which no driver's license points are assessed, nor does it include equipment violations in Part 9 of Article 3 of Chapter 20. Thus, for example, the unlawful use of a blue light on a vehicle in violation of G.S. §20-130.1 is not a criminal moving violation because that offense is an equipment violation codified in Part 9 of Article 3 of Chapter 20. In contrast, speeding more than 15 miles per hour over the speed limit or more than 80 miles per hour in violation of G.S. §20-141(j1) ***is*** a criminal moving violation as this offense is a misdemeanor codified in Part 10 of Article 3 of Chapter 20 and is not listed as a conviction for which no points may be assessed in G.S. §20-16(c).

New G.S. §13-3 provides that if a law enforcement officer has reasonable grounds to believe that a person under the age of 18 who has a limited learner's permit or a provisional license has committed a criminal moving violation, the person is charged with that violation, and the person's license is not subject to civil revocation for a violation of the implied consent laws, law enforcement officer must execute a revocation report and take the provisional licensee before a judicial official for an initial appearance. This requires law enforcement officers to arrest provisional licensees charged with misdemeanor motor vehicle offenses, such as speeding, for which drivers typically are cited and released.

The revocation report must be filed with the judicial official (typically, a magistrate) conducting the initial appearance on the underlying criminal moving violation. If a properly executed report is filed with a judicial official when the person is present, the judicial official must, after completing any other proceedings, determine whether there is probable cause to believe the conditions requiring civil license revocation pursuant to G.S. §20-13.3(b) are met. If the judicial official finds probable cause, he or she must enter an order revoking the provisional licensee's permit or license for 30 days. The provisional licensee (unlike a person whose license is revoked for an implied consent offense pursuant to G.S. §20-16.5) is not required to surrender his or her permit or license card. The clerk must notify DMV of the issuance of a G.S. §20-13.3 revocation order within two business days. A person whose license is revoked under G.S. §20-13.3 is not eligible for a limited driving privilege.

Finally, an uncodified section of the act directs DMV to study the issue of teen driving and the effectiveness of the act's provisions. DMV specifically must determine whether, beginning October 1, 2011, there has been a decrease in any of the following types of incidents involving provisional licensees: property damage crashes, personal injury crashes, fatal crashes, moving violations, and seat belt violations. DMV must report its findings to the Joint Legislative Transportation Oversight Committee by February 1, 2014.

Effective: January 1, 2012

Session Law 2011-408 (Senate Bill 315)
Campaign Signs in Highway Right-of-Way

Amends G.S. §136-32 to prohibit the placement of political signs on a highway unless the sign meets the requirements set forth in the statute related to size and placement. Compliant signs may only be erected and maintained during the period beginning on the 30th day before the beginning date of "one-stop" early voting and ending on the 10th day after the primary or election day. Creates new subsection (e) to make it a Class 3 misdemeanor to steal, deface, vandalize or unlawfully remove a political sign lawfully placed pursuant to the statute.

Effective: October 1, 2011