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Police Law Bulletin

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2012 Legislation Affecting Criminal Law and Procedure

Below are brief summaries of selected legislation affecting criminal law and procedure that were enacted during the 2012 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 2012-7 (House Bill 778)
Innocence Commission Procedures and Preservation of Biological Evidence

This act amends several statutes related to the preservation of biological evidence. G.S. 15A-268(a1) has required that a custodial agency preserve any physical evidence reasonably likely to contain any biological evidence collected in the course of a criminal investigation or prosecution for as long as required by the preservation statutes. The statute is amended to clarify that this requirement applies regardless of the date of collection. The act also amends G.S. 15A-268(a7) to require the custodial agency, if requested, to provide the defendant with an inventory of biological evidence in the agency's custody and, if evidence was destroyed based on a court order or other written directive, to provide the defendant a copy of the order or directive. G.S. 15A-268(b) allows the custodial agency to dispose of biological evidence if all of the listed conditions are met. The statute is amended to add to the list of conditions a requirement that the custodial agency determine that it has no duty to preserve the evidence under new G.S. 15A-1471 (summarized below).

The act makes the following additional changes to the North Carolina Innocence Inquiry Commission procedures. It adds a definition of "claimant" to G.S. 15A-1460 so that the term is essentially defined as a "person asserting that he or she is completely innocent of any criminal responsibility for a felony crime upon which the person was convicted." G.S. 15A-1467(a) is amended to clarify the people who may refer a claim of innocence to the Commission as: any court, a state or local agency, a claimant, or a claimant's counsel. The act deletes from G.S. 15A-1468(b) the provision allowing the Commission to close portions of the proceedings to the victim. G.S. 15A-1469 is revised to authorize the Commission Chair to request the Attorney General (formerly, the Director of the Administrative Office of the Courts) to appoint a special prosecutor to represent the State at Commission proceedings if there is credible evidence

(formerly, an allegation or evidence) of prosecutorial misconduct, and precludes appointment as a special prosecutor a prosecutor from the district where the convicted person was tried. The act also amends G.S. 148-82(b), the provision on compensating people who have been convicted of a felony and been imprisoned and who thereafter have had their cases dismissed through Innocence Commission proceedings, to apply only to people who pled not guilty or no contest to the charges. Finally, the act creates new G.S. 15A-1471 which provides that on receiving notice from the Commission, the State must preserve all files and evidence subject to disclosure under G.S. 15A-903, the principal statute governing the defendant's right to discovery in criminal cases. The duty to preserve ceases under the new statute (although a duty to preserve may still exist under other statutes) once the Commission provides notice to the State that it has completed its inquiry. The new statute gives the Commission the right to a copy of all preserved records and to inspect, examine, and test physical evidence.

Effective: June 7, 2012

Session Law 2012-12 (House Bill 843)
Emergency Management

As part of a rewrite of North Carolina's emergency management provisions, repealing Article 1 of G.S. Chapter 166A and adding new Article 1A, this act makes the following changes affecting criminal law. New G.S. 166A-19.30(d) and new G.S. 166A-19.31(h) make it a Class 2 misdemeanor to violate a declaration or executive order issued by the Governor or ordinance issued by a municipality or county during a state of emergency. The act adds new G.S. 14-288.20A repeating these provisions and adding that it is a Class 2 misdemeanor to willfully refuse to leave a public building as directed in a Governor's order under G.S. 166A-19.78. The act makes additional nonsubstantive, conforming changes to G.S. Chapter 14, Article 36A, renamed as Riots, Civil Disorders, and Emergencies. The act also revises G.S. 14-415.4(e)(6) and G.S. 14-415.12(b)(8) to require denial of a petition to restore firearm rights after a felony conviction and denial of an application for a concealed handgun permit for a conviction under new G.S. 14-288.20A or former G.S. 14-288.12, 14-288.13, and 14-288.14, which are repealed by the act.

Effective: October 1, 2012

Session Law 2012-14 (House Bill 345)
Move-Over Law

G.S. 20-157(f) requires drivers to move over or slow their vehicles when an emergency or public service vehicle is parked or standing within twelve feet of a roadway and is giving a warning signal. The statute is amended to expand the definition of "public service vehicle" to include utility service vehicles, including electric, cable, telephone, communications and gas vehicles, and highway maintenance vehicles with amber-colored flashing lights authorized by G.S. 20-130.2.

Effective: October 1, 2012

Session Law 2012-28 (House Bill 673)
Nuisance Injunctions For Street Gang Activity

This act creates a new Article 13B (G.S. 14-50.31 through G.S. 14-50.33), the North Carolina Street Gang Nuisance Abatement Act, declaring as a public nuisance a street gang that regularly engages in criminal street gang activities (as defined in G.S. 14-50.16) and real property used by a street gang for the

purpose of criminal street gang activities. The new article allows for a civil action, under Article 1 of G.S. Chapter 19, to abate the nuisance. The court may enter an order enjoining individuals named as defendants in the suit from engaging in criminal street gang activities. Such an order expires one year after entry unless earlier modified or revoked by the court. The act repeals G.S. 14-54, the current street gang nuisance statute.

Effective: October 1, 2012

Session Law 2012-35 (House Bill 941)
Pseudoephedrine Transactions

This act amends G.S. 90-113.53 to limit retail sales of pseudoephedrine products to 3.6 grams per day (previously, two packages containing a total of 3.6 grams) and 9 grams within any thirty-day period (previously, three packages containing a total of 9 grams). The act also amends G.S. 90-113.52(c) to require every retail purchaser of a pseudoephedrine product to furnish a valid, unexpired, government-issued photo identification (previously, photo identification) and to provide, in writing or orally, a valid personal residential address. The act deletes the requirement in that subsection that the retailer provide the purchaser with written notice of the limits on pseudoephedrine transactions.

Effective: June 20, 2012

Session Law 2012-38 (House Bill 149)
Terrorism Offense

This act adds a new Article 3A (G.S. 14-10.1), Terrorism, creating a new terrorism offense. A person is guilty of the offense if he or she:

- commits an "act of violence"
- with the intent either to
    - intimidate the civilian population at large or an identifiable group of the civilian population, or
    - influence, through intimidation, the conduct or activities of the government of the United States, a state, or any unit of local government.

G.S. 14-10.1(a) defines an "act of violence" as one of several different crimes, including, among others, murder, manslaughter, and felonies involving assault or the use of force against another person. The offense is a separate offense from and is punishable one class higher than the underlying act of violence, except the offense is punishable as a Class B1 felony if the underlying act of violence is a Class A or B1 felony. Real and personal property used in or derived from the offense is subject to seizure and forfeiture as provided in G.S. 14-10.1(b).

Effective: December 1, 2012

Session Law 2012-39 (House Bill 176)
Domestic Violence Changes

G.S. 15A-1343(b)(12) authorizes the court to order as a regular condition of probation attendance at and completion of an abuser treatment program if the court finds the defendant responsible for acts of domestic violence, and a program approved by the North Carolina Domestic Violence Commission is reasonably available to the defendant. This act revises the statute to require that if the defendant is discharged from the program for failing to comply, such noncompliance must be reported to the court. Amended G.S. 15A-1343(b) also provides that if a defendant is required to participate in an abuser treatment program as a condition of unsupervised probation, the court must schedule a compliance review within sixty days of the entry of judgment and every sixty days thereafter until the defendant completes the program.

The act also amends G.S. 15A-1382.1(a), which provides that if the case involved an offense listed in that subsection and the defendant and victim had a personal relationship as defined in G.S. 50B-1(b), the court must enter on the judgment of conviction that the case involved domestic violence. Revised G.S. 15A-1382.1(a) imposes this requirement if the defendant is convicted of an offense involving any of the acts in G.S. 50B-1(a). The act repeals G.S. 15A-1382.1(b), which addressed the authority of the court to impose special conditions of probation in domestic violence cases when the court imposes a community punishment; these provisions were made moot by the General Assembly's passage of the Justice Reinvestment Act in 2011, which significantly narrowed the differences between community and intermediate punishments.

Effective: December 1, 2012

Session Law 2012-46 (House Bill 199)
Metal Theft

This act makes several changes to the regulation of metal purchases and sales. It recodifies and renames G.S. Chapter 91A, Pawnbrokers and Cash Converters Modernization Act, as Part 1 of G.S. Chapter 66, Article 45 (G.S. 66-385 through G.S. 66-399), Pawnbrokers and Cash Converters; and recodifies and renames G.S. Chapter 66, Article 25, Regulation of Precious Metal Businesses, as Part 2 of G.S. Chapter 66, Article 45 (G.S. 66-405 through G.S. 66-414), Precious Metal Businesses. The substance of those provisions did not change.

The act adds a new Part 3 to Article 45 (G.S. 66-415 through 66-425), Regulation of Sales and Purchases of Metals, with permitting and record-keeping requirements, purchasing and transportation restrictions, and other regulations involving covered transactions. New G.S. 66-415 defines terms used in new Part 3 of Article 45. New G.S. 66-416 requires a secondary metals recycler to issue a receipt for all purchase transactions in which the secondary metals recycler purchases regulated metals. The receipt must be issued to, and signed by, the person delivering the metals, and the secondary metals recycler must be able to provide documentation regarding the employee who completed the transaction. In addition, the statute requires a secondary metals recycler to maintain a record of all purchase transactions in which the secondary metals recycler purchases regulated metals. The record must contain: the name and address of the secondary metals recycler; the name, initials or other identification of the individual entering the information; the date of the transaction; the weight of the metals purchased; a description of the metals property, the physical address where the metals were obtained by the seller, the date when purchased by the seller, and a statement signed by the seller or his agent certifying that the seller has the right to sell and dispose of the property; the amount paid for the metals; the name and address of the vendor of the

regulated metals property and the license plate number, make, model and color of the vehicle used to deliver the metals; a photocopy or electronic scan of the unexpired drivers license or state or federally issued photo identification card of the person delivering the metals to the secondary metals recycler; a copy of the receipt required by this section; a video or digital photograph of the seller together with the regulated metals property; and, for transactions involving catalytic converters not attached to a vehicle and central air conditioner evaporator coils or condensers, a clear impression of the index finger of the person delivering the regulated metals to the secondary metals recycler.

New G.S. 66-417 requires the secondary metals recycler to keep the aforementioned records for no less than two years from the date of purchase. It also gives law enforcement the right to inspect, during the usual and customary business hours of the secondary metals recycler, any and all purchased regulated metals property in the possession of the recycler, and any of the aforementioned records. This statute also allows the Chief of Police to require that a secondary metals recycler make receipts for the purchase of regulated metals property available for pickup each regular workday, or that the records be transferred electronically directly to the police department.

New G.S. 66-418 gives law enforcement officers the right to issue a "hold notice" if the officer has reasonable suspicion to believe nonferrous metals in the possession of a nonferrous metals purchaser (as defined in new G.S. 66-415) has been stolen. The hold notice bars a nonferrous metals purchaser from processing or removing the items from a secondary metal recycler's fixed site for fifteen days. The officer may renew the notice for an additional thirty days. The statute also requires any secondary metals recycler owner convicted of certain felonies to retain nonferrous metals for seven days from the date of purchase before disposing or altering the items.

New 66-419 prohibits a secondary metals recycler from: operating a business that cashes checks at a fixed site at which the secondary metals recycler purchases regulated metals; purchasing nonferrous metals for the purpose of recycling unless a permit for such activity has been issued; purchasing central air conditioner evaporator coils or condensers, or catalytic converters not attached to a vehicle, except from a company, contractor or individual in the business of installing, replacing, maintaining or removing such items; and purchasing regulated metals property he or she should reasonably know to be stolen. The statute also makes it unlawful to transport or possess upon the highways more than 25 pounds of copper unless certain specified conditions have been met. Finally, the statute sets forth a specific list of items which it is unlawful for a secondary metals recycle to purchase.

New G.S. 66-420 prohibits a nonferrous metals purchaser from entering into a cash transaction for the purchase of copper, and from purchasing any nonferrous metals property for any more than $100. per transaction. No more than one cash transaction may be made per day from any person or business.

New G.S. 421 through 66-422 sets forth the terms for issuance of a nonferrous metals purchase permit by the Sheriff.

New G.S. 66-424 makes a violation of any provision in new Part 3 of Article 45 a Class 1 misdemeanor for a first offense and a Class I felony for a subsequent offense; it also requires the revocation of a permit for a fixed site for six months if the owner or employees are convicted of a total of three or more violations of Part 3 within a ten-year period.

New G.S. 14-159.4 creates the new offense of:

- willfully and wantonly

- cutting, mutilating, defacing, or otherwise injuring
- any personal or real property, including any fixtures or improvements
- of another
- for the purpose of obtaining nonferrous metals.

The new statute creates five different punishment levels, from Class 1 misdemeanor to Class D felony, depending on the damage from the unlawful act. Thus, if the damage to property is less than $1,000, the offense is a Class 1 misdemeanor; if the offense results in the death of another person, the offense is a Class D felony.

Effective: October 1, 2012

Session Law 2012-56 (Senate Bill 816)
Banking Law Changes

This act rewrites North Carolina's banking laws. Among the changes, the act adds the following offenses (specified in greater detail in the indicated statutes):

- New G.S. 53C-8-7 makes it a Class H felony for a bank examiner to make a false report about the condition of a bank that the examiner has examined.
- New G.S. 53C-8-8 makes it a Class 1 misdemeanor for an examiner or other employee of the Office of the Commissioner of Banks to keep secret the information obtained in an examination of a bank except as otherwise provided in G.S. Chapter 53C.
- New G.S. 53C-8-9 makes it a Class 1 misdemeanor, subject to certain exceptions, for a bank or officer, director, or employee to make an extension of credit or grant a gratuity to the Commissioner of Banks, a deputy commissioner, or a bank examiner, or for them to accept an extension of credit or gratuity. A person violating this provision may be a fined a sum equal to the amount of the extension made or gratuity given.
- New G.S. 53C-8-10 makes it a Class 1 misdemeanor to willfully and maliciously make a false and derogatory statement about the financial condition of a bank.
- New G.S. 53C-8-11 creates five bank fraud offenses, including an embezzlement offense. An offense under this section involving funds of $100,000 or more is a Class C felony, and an offense involving less than $100,000 is a Class H felony.

The act repeals Article 10 of G.S. Chapter 53 containing similar crimes and other articles within that chapter containing other bank-related crimes.

Effective: October 1, 2012

Session Law 2012-127 (House Bill 512)
Waste Kitchen Grease

This act adds G.S. 14-79.2 to create the following three new offenses:

- Taking and carrying away a waste kitchen grease container or waste kitchen grease contained therein bearing a notice that unauthorized removal is prohibited without the written consent of the owner of the container;
- Intentionally contaminating or purposely damaging any waste kitchen grease container or grease therein; and
- Placing a label on a waste kitchen grease container knowing that it is owned by another person in order to claim ownership of the container.

If the value of the container or grease is $1,000 or less, the offense is a Class 1 misdemeanor; if the value is more than $1,000, the offense is a Class H felony.

Effective: January 1, 2013

Session Law 2012-134 (Senate Bill 828)
Unemployment Insurance Fraud

Section 4(a) of the act amends G.S. 96-18(a) to divide unemployment insurance fraud into two offense classes: a Class I felony if the value of the benefit wrongfully obtained is more than $400, and a Class 1 misdemeanor if the value of the benefit is $400 or less.

Effective: December 1, 2012

Session Law 2012-136 (Senate Bill 416)
Racial Justice Act Amendments

This act primarily addresses the North Carolina Racial Justice Act, enacted in 2009. The Governor vetoed the new act, and the General Assembly overrode her veto. This summary briefly describes the changes.

Sections 1 and 2 address two statutes that are not part of the Racial Justice Act. Effective for executions scheduled after July 2, 2012, amended G.S. 15-188 provides that the superintendent of the State penitentiary must provide, in conformity with G.S. Ch. 15, Article 19 (Execution) (previously, in conformity with that Article and approved by the Governor and Council of State), the necessary appliances for infliction of death and qualified personnel to perform the procedure. Effective for Rule 24 hearings scheduled on or after July 2, 2012, amended G.S. 15A-2004(b) adds the following provisions: a court may discipline or sanction the State for failing to comply with the time requirements in Rule 24 of the General Rules of Practice for the Superior and District Courts but may not declare a case as noncapital for such a failure; and, in addition to any discipline or sanctions the court may impose, the court must continue the case for sufficient time so that the defendant is not prejudiced by any delays in the holding of the Rule 24 hearing.

Sections 3 and 4 of the act address statutes previously enacted by the Racial Justice Act. Section 3 amends and adds various subsections to G.S. 15A-2011. Amended G.S. 15A-2011(a) provides that a finding that race was the basis of the decision to seek or impose a death sentence may be established if the court finds that race was a significant factor at the time the death sentence was sought or imposed. "At the time the death sentence was sought or imposed" means the "period from 10 years prior to the commission of the offense to the date that is two years after the imposition of the death sentence." New G.S. 15A-2011(a1) provides that a defendant who makes a motion for relief from a death sentence under the Racial Justice Act must waive, as provided in the new subsection, any objection to the imposition of life imprisonment without parole. G.S. 15A-2011(b), which described evidence relevant to establish a finding that race was a significant factor in decisions to seek or impose the sentence of death, is deleted. Amended G.S. 15A-2011(c) states that the defendant has the burden of proving that race was a significant factor in decisions to seek or impose the sentence of death in the county or prosecutorial district (was, the county, prosecutorial district, judicial division, or state). New G.S. 15A-2011(d) describes evidence relevant to establish a finding that race was a significant factor in decisions to seek or impose a sentence of death. It states that evidence may include statistical evidence derived from the county or prosecutorial district where the defendant was sentenced to death, or other evidence, that the race of the defendant was a significant factor or that race was a significant factor in decisions to exercise peremptory challenges during jury selection. It also states that evidence may include sworn testimony of personnel involved in the criminal justice system, including attorneys, prosecutors, law enforcement officers, judicial officials, and jurors. New G.S. 15A-2011(e) states that statistical evidence alone is insufficient to establish that race was a significant factor under the Racial Justice Act article and that the State may offer evidence in rebuttal of claims or evidence of the defendant, including statistical evidence. New G.S. 15A-2011(f) describes procedures for raising and hearing a claim that race was a significant factor in decisions to seek or impose a sentence of death in the defendant's case. New G.S. 15A-2011(g) states that if the court finds that race was a significant factor in decisions to seek or impose a death sentence in the defendant's case, the court shall order that a death sentence not be sought or that a death sentence be vacated and the defendant be resentenced to life imprisonment without parole. Section 4 repeals G.S. 15A-2012, which contained the hearing procedures for Racial Justice Act claims.

Effective: July 2, 2012 (applies to all capital trials held before, on, or after this date, and to all capital defendants sentenced to the death penalty before, on, or after this date) The act contains additional uncodified provisions on the applicability of the act to motions filed, hearings commenced, and decisions issued pursuant to S.L. 2009-464.

Session Law 2012-142 (House Bill 950)
Budget Bill

This act modifies the 2011 Appropriations Act. The Governor vetoed the act, and the General Assembly overrode her veto. In pertinent part, the act contains the following provisions:

- Section 15.3A establishes the North Carolina Human Trafficking Commission in the Department of Justice with the powers enumerated in that section, including the power to research the occurrence of human trafficking in North Carolina, suggest policies, procedures, and legislation to eradicate human trafficking, and provide assistance to law enforcement. The Commission terminates December 31, 2014.

- Effective for fees waived on or after July 1, 2012, Section 16.6(b) amends G.S. 7A-304(a) to provide that the court may waive costs under that section and may waive or reduce costs under

subdivisions (7) or (8) of that section (which deal with state and local crime lab costs) only if the court enters a written order, supported by findings of fact and conclusions of law, determining that there is just cause for the order. Section 16.6(a) amends G.S. 7A-38.7(a) to impose a similar requirement for waiver or reduction of dispute resolution fees in criminal cases.

Effective: July 1, 2012

Session Law 2012-143 (Senate Bill 820)
Hydraulic Fracturing

This act authorizes hydraulic fracturing, known as fracking, in North Carolina. The Governor vetoed the act, and the General Assembly overrode her veto. As part of numerous changes and additions to the North Carolina General Statutes, Section 2(a) of the act revises G.S. 113-380 to provide that a violation of G.S. Ch. 113, Article 27 (Oil and Gas Conservation) is a Class 1 misdemeanor except as otherwise provided.

Effective: August 1, 2012

Session Law 2012-146, as amended by Session Law 2012-194 (House Bill 494, as amended by Senate Bill 847)
Expanded Authorization for Continuous Alcohol Monitoring

This act amends several statutes to authorize the imposition of continuous alcohol monitoring in a range of circumstances. Those circumstances are as follows.

Pretrial Release. Amended G.S. 15A-534(a) authorizes a judicial official to include as a condition of pretrial release for any criminal offense that the defendant abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring (CAM) system of a type approved by the Division of Adult Correction of the Department of Public Safety. The amended subsection requires that any violation of an abstinence/CAM condition be reported by the monitoring provider to the district attorney. The act likewise amends G.S. 15A-534.1, which prescribes special pretrial release procedures for domestic violence offenses, to authorize a judge to impose the same conditions. The act repeals G.S. 15A-534(i), which authorized for CAM as a pretrial release condition for certain impaired driving offenses only.

Conditions of probation. New G.S. 15A-1343(a1)(4a) allows as a condition of community or intermediate punishment that the defendant "abstain from alcohol consumption and submit to continuous alcohol monitoring when alcohol dependency or chronic abuse has been identified by a substance abuse assessment." New G.S. 15A-1343(b1)(2c) allows this requirement to be imposed as a special condition of probation. Amended G.S. 15A-1343.2(f) expands a probation officer's delegated authority when a person has received an intermediate punishment to include requiring that the person submit to continuous alcohol monitoring when abstinence from alcohol consumption has been specified as a condition of probation.

Eliminated from G.S. 15A-1343(b) is language that barred requiring a defendant to pay the costs of a substance abuse monitoring program or other special condition of probation in lieu of, or prior to, the payments required by G.S. 15A-1343(b), which specifies the regular conditions of probation. New G.S. 15A-1343.3(b) requires that probationers pay fees for CAM directly to the monitoring provider and prohibit the provider from terminating CAM for nonpayment of fees without court authorization.

Impaired driving offenses. Amendments to G.S. 20-28(a) permit a court, in sentencing a defendant convicted of driving while license revoked, to order abstinence from alcohol and CAM for a minimum period of 90 days as a condition of probation if the person's license was originally revoked for an impaired driving revocation.

New G.S. 20-179(k2) allows a judge to order "as a condition of special probation" for any level of punishment under G.S. 20-179, which governs sentencing for DWI and related offenses, that "the defendant abstain from alcohol consumption, as verified by a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction of the Department of Public Safety." New G.S. 20-179(k3) permits the court to authorize a probation officer to require a defendant to submit to CAM for assessment purposes if the defendant is required, as a condition of probation to abstain from alcohol consumption and the probation officer believes the defendant is consuming alcohol. If the probation officer orders the defendant to submit to CAM pursuant to this provision, the defendant must bear the costs of CAM.

The act also amends the mandatory punishment provisions for Level One sentencing in G.S. 20-179(g). That subsection currently requires a minimum term of imprisonment of not less than 30 days and provides that the term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. Amended G.S. 20-179(g) permits a judge to reduce the minimum term of imprisonment to a term of not less than ten days if the judge imposes as a condition of special probation that the defendant abstain from alcohol consumption for at least 120 days and be monitored by a continuous alcohol monitoring system of a type approved by the Division of Adult Correction of the Department of Public Safety. The amended subsection provides that if a defendant is monitored on an approved CAM system before trial, up to 60 days of pretrial monitoring may be credited against the 120-day monitoring requirement for probation.

The act likewise amends the mandatory punishment for Level Two sentencing in G.S. 20-179(h). That subsection currently requires a minimum term of imprisonment of not less than seven days and provides that the term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. Amended G.S. 20-179(h) permits a judge to suspend the term of imprisonment if the judge imposes as a condition of special probation that the defendant abstain from consuming alcohol for at least 90 consecutive days, as verified by a continuous alcohol monitoring system of a type approved by the Division of Adult Correction of the Department of Public Safety. If the defendant is monitored on an approved CAM system before trial , up to 60 days of pretrial monitoring may be credited against the 90-day monitoring requirement for probation.

New G.S. 20-179(k4) provides that the judge may not impose CAM under subsections (g), (h), (k2), and (k3), the new and amended subsections above, if he or she finds good cause for not requiring the defendant to pay the costs of CAM except if "the local governmental entity responsible for the incarceration of the defendant in the local confinement facility agrees to pay the costs of the system." The act repeals G.S. 20-179(h3), which required that fees and costs ordered for CAM imposed under G.S. 20-179(h1) (authorizing CAM as a condition of probation for a Level One or Two punishment) be paid to the clerk of court, who then transmitted the fees to the monitoring entity.

Custody cases. New G.S. 50-13.2(b2) provides that any order for custody, including visitation, may require either or both parents to abstain from consuming alcohol and to submit to CAM to verify compliance. The new subsection provides that failure to comply with the abstinence/CAM condition is grounds for civil or criminal contempt.

Effective: December 1, 2012

Session Law 2012-148 (Senate Bill 635)
Sentencing of Juveniles to Life Imprisonment

North Carolina law authorizes a juvenile's case to be transferred to superior court and the juvenile to be tried as an adult for a felony allegedly committed when the juvenile was 13, 14, or 15. If convicted, the juvenile is sentenced in the same way that an adult would be sentenced for the same offense, with few exceptions. The U.S. Supreme Court held in *Roper v. Simmons*, 543 U.S. 551 (2005), that imposing the death penalty on someone who was younger than eighteen when he or she committed a capital offense violates the Eighth Amendment. Five years later, in *Graham v. Florida*, ___ U.S. ___, 130 S. Ct. 2011 (2010), the Court held that a sentence of life without the possibility of parole violates the Eight Amendment when imposed on someone who committed a non-homicide offense when younger than age eighteen. Consistent with those cases, in North Carolina the death penalty can never be imposed on someone for an offense committed before age eighteen, and a sentence of life without the possibility of parole can be imposed only in cases of first-degree murder. *See* G.S. 14-17.

On June 25, 2012, in *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455 (2012), the Supreme Court extended its holding in *Graham* and held in a capital murder case involving a juvenile defendant that an automatic sentence of life without the possibility of parole violates the Eighth Amendment. Because North Carolina required such a sentence on a juvenile's conviction for first degree murder, legislative changes were needed. The General Assembly made those changes in this act which creates a new Article 93, Sentencing for Minors Subject to Life Imprisonment without Parole, in G.S. Chapter 15A. The new article authorizes a sentence of life imprisonment with the possibility of parole after 25 years for juvenile defendants convicted of first-degree murder. If the murder conviction is based solely on the felony murder rule, the court must impose this sentence. In other cases involving first-degree murder, the court must conduct a hearing, pursuant to new G.S. 15A-1477, to determine whether the defendant should be sentenced to life imprisonment with the possibility of parole or without parole. The new statute identifies mitigating factors that the defendant may submit to the judge in making this decision. New G.S. 15A-1479 describes the conditions and procedures for parole for juvenile defendants sentenced to life imprisonment with the possibility of parole.

The act applies to sentencing hearings held on or after the effective date of the act. It also applies to resentencing hearings for juvenile defendants who were younger than 18 at the time of their offense and who were sentenced to life imprisonment without parole.

Effective: July 12, 2012

Session Law 2012-149 (Senate Bill 707)
School Offenses and Procedures; Cyberbullying; Magistrate Charging Procedures

New G.S. 14-33(c1) provides that school personnel who take reasonable action in good faith to end a fight or altercation between students incur no civil or criminal liability as a result of their actions; effective with the beginning of the 2012–13 school year, new G.S. 115-390.3(d) provides that no school employee may be reprimanded or dismissed for acting or failing to act to stop or intervene in an altercation between students if the employee's actions are consistent with local education board policies. Amended G.S. 115C-288(g) requires the principal to report to law enforcement the occurrence of certain offenses on school property when the principal has knowledge or actual notice of the occurrence (was, knowledge, reasonable belief, or actual notice). The subsection also is amended to delete the provision on demotion or dismissal of a principal who fails to make such a report.

New G.S. 115C-289.1 requires a supervisor of a school employee to report to the principal an assault by a student against the employee resulting in physical injury when the supervisor has actual notice of the assault.

Effective: July 12, 2012

New G.S. 14-458.2 creates the offense of cyberbullying of a school employee by a student, a Class 2 misdemeanor. G.S. 14-458.2(a) defines school employees and students as those at primary and secondary schools. G.S. 14-458.2(b) lists several ways in which the offense is committed, such as building a fake profile or website with the intent to intimidate or torment a school employee. G.S. 14-458.2(c) allows for discharge and dismissal of the case on completion of probation and, if the person qualifies, expunction under G.S. 15A-146, the statute on expunctions of dismissals. In addition, if a student is convicted of cyberbullying under G.S. 14-458.2, new G.S. 115C-366.4 requires transfer of the student to another school in the local administrative unit or, if there is not an appropriate school, another class or teacher.

Effective: December 1, 2012

G.S. 14-453(7c) is amended to expand the definition of "profile," on which a cyberbullying offense may be based.

Effective: July 12, 2012

G.S. 14-458.1(a)(3), (5), and (6), which describe the ways in which a cyberbullying offense may be committed, have been amended to require proof of an improper intent as described in those subsections.

Effective: December 1, 2012

The act adds new G.S. 15A-301(b1) and (b2) to modify charging procedures by magistrates for offenses allegedly committed by school employees while discharging their duties of employment. New subsection (b1) provides that a magistrate may not issue an arrest warrant or other criminal process in such a case without the prior written approval of the district attorney or designee. This requirement does not apply to traffic offenses or offenses that occur in the presence of a law enforcement officer. New subsection (b2) allows a district attorney to decline the authority under new subsection (b1), in which case the chief district judge must appoint a magistrate or magistrates to review any application for an arrest warrant or other criminal process against a school employee for a misdemeanor allegedly committed during the discharge of employment duties. Subsection (b2) explicitly lifts this requirement if the offense is a traffic offense, the offense occurred in the presence of a law enforcement officer, or there is no appointed magistrate available to review the application; the new subsection implicitly exempts felony cases from the requirement because it applies to misdemeanors only. Subsection (b2) states that the failure to comply with the requirement does not affect the validity of any arrest warrant or other criminal process. The changes are effective on or after the date a magistrate is appointed by the chief district court judge to perform these functions.

Effective: On or after the date that a magistrate is appointed to perform the functions set forth in this section

Session Law 2012-150 (House Bill 203)
False Liens

The punishment for violation of G.S. 14-118.1, which prohibits the simulation of court process in connection with the collection of a claim, demand, or account, is increased from a Class 2 misdemeanor to Class I felony.
The grounds for a violation of G.S. 14-118.12, which prohibits residential mortgage fraud, are expanded to prohibit knowingly filing in a public or a private record generally available to the public a document falsely claiming that a mortgage loan has been satisfied, discharged, released, revoked, or terminated or is invalid.
The punishment for a violation of G.S. 14-401.19, which prohibits filing a false security agreement, is increased from a Class 2 misdemeanor to Class I felony.
The punishment for a violation of G.S. 44A-12.1(c), which prohibits the filing of a claim of lien that is not authorized by statute, is for an improper purpose, or wrongfully interferes with another person, is increased from a Class 1 misdemeanor to Class I felony.
New G.S. 14-118.6 creates a new offense of filing a false lien or encumbrance, a Class I felony. A violation is also an unfair and deceptive trade practice under G.S. 75-1.1. A person is guilty of this offense if he or she:

- presents for filing
- in a public record or a private record generally available to the public
- a false lien or encumbrance
- against the real or personal property
- of a public officer or public employee
- on account of the performance of the officer or employee's official duties
- knowing or having reason to know
- that the lien or encumbrance is false or contains a materially false, fictitious, or fraudulent statement or representation.

The new statute authorizes the register of deeds to refuse to file the lien on reasonable suspicion that it is false. If the filing is denied, the person may commence a special proceeding to determine whether the filing is appropriate as provided in new G.S. 14-118.6(b).

Effective: December 1, 2012

Session Law 2012-153 (Senate Bill 910)
Unlawful Sale, Surrender, or Purchase of a Minor

This act adds G.S. 14-43.14 to make the unlawful sale, surrender, or purchase of a minor a Class F felony. A person commits the new offense if he or she:

- acting with willful or reckless disregard for the life or safety of a child
- participates
- in the acceptance, solicitation, offer, payment, or transfer of any compensation
- in connection with the unlawful acquisition or transfer of the physical custody of a minor.

The new statute provides for a minimum fine of $5,000 for a first offense and $10,000 for a subsequent offense. It also provides that a child whose parent, guardian, or custodian has sold or attempted to sell the child in violation of the new statute is an "abused juvenile" as defined by G.S. 7B-101(1) and the court may place the child in the custody of a county department of social services or any person as the court finds to be in the child's best interest. The sentencing court also must consider whether the defendant is a danger to the community and whether requiring him or her to register as a sex offender under Article 27A of G.S. Chapter 14 would further the purpose of the sex offender registration law. If the court so finds, it may enter an order requiring the person to register. The act amends G.S. 14-208.6(4) to make a conviction under the new statute a "reportable conviction" under the sex offender registration law if the sentencing court orders the person to register. Attempts, conspiracies, and solicitations to sell, surrender, or purchase a child apparently are not reportable because not specified in the revised statute. *Compare, e.g.,* G.S. 14-208.6(4)a. (specifying that an attempt to commit a sexually violent offense is reportable); G.S. 14-208.6(5) (specifying that a conspiracy or solicitation to commit a sexually violent offense is reportable).

Effective: December 1, 2012

Session Law 2012-154 (House Bill 54)
Habitual Misdemeanor Larceny

This act amends G.S. 14-72(b), which lists various circumstances in which a larceny is a Class H felony, to make a larceny a Class H felony if committed after the defendant has previously been convicted four times of a larceny as defined in new G.S. 14-72(b)(6). The new subdivision describes in detail when a prior larceny conviction counts for the new offense. Thus, a prior conviction counts if it is a conviction in North Carolina or another jurisdiction for any larceny offense under "this section" (that is, G.S. 14-72), any offense deemed or punishable as a larceny under "this section," or any substantially similar offense in any other jurisdiction, regardless of whether the prior convictions were misdemeanors or felonies. A prior conviction may be counted only if the defendant was represented by counsel or waived counsel. If a person was convicted of more than one misdemeanor larceny in a single session of district court, or in a single week of superior court or of a court in another jurisdiction, only one of the convictions count; however, convictions based on offenses that occurred in separate counties count as separate convictions.

Effective: December 1, 2012

Session Law 2012-165 (Senate Bill 105)
Punishment for Second-Degree Murder and Deaths Caused by DWI

Second-degree murder has been classified as a Class B2 felony under G.S. 14-17. This act adds G.S. 14-17(b) to make second-degree murder a Class B1 felony except if the "malice" necessary to prove second-degree murder is based on recklessness as described in new G.S. 14-17(b)(1) or the murder is caused by the unlawful distribution of certain drugs, such as opium, in which case the offense remains a Class B2

felony. The opening sentence of new G.S. 14-17(b) states that second-degree murder as provided in the new subsection does not include a violation of G.S. 14-23.2 ("Murder of an unborn child; penalty"). The latter statute was not revised by the act and continues to state that a violation of G.S. 14-23.2(3) based on recklessness is punishable in the same manner as for second-degree murder under G.S. 14-17; because second-degree murder based on recklessness remains a Class B2 felony under new G.S. 14-17(b), a violation of G.S. 14-23.2(3) based on recklessness appears to remain a Class B2 felony as well.

The act also revises G.S. 20-141.4(b) to state that the punishment for repeat felony death by vehicle remains a Class B2 felony (was, the same as for second-degree murder); to provide that the court must sentence a defendant convicted of aggravated death by vehicle, which remains a Class D felony, to a sentence in the aggravated range; and to increase from a Class E to Class D felony the classification for felony death by vehicle and to authorize an intermediate punishment for a defendant in prior record level I.

Effective: December 1, 2012

Session Law 2012-168 (Senate Bill 141)
Trespass, License Revocation Procedures for Provisional Licensees, Extension of Time for Forensic Accreditation and Certification

Creates new G.S. 14-159.12(c), a Class A1 misdemeanor, for a person to:

- commit a first-degree trespass in violation of G.S. 14-159.12(a),
- on the premises of an electric, water, or natural gas utility facility as described in new G.S. 14-159.12(c) by actually entering a building, or climbing, going over, or otherwise surmounting a fence or other barrier to reach the facility.

Creates new G.S. 14-159.12(d), a Class H felony, for a person to violate new G.S. 14-159.12(c) if

- the offense is committed with the intent to disrupt the normal operation of an electrical facility as described in G.S. 14-159.12(c)(1), or
- the offense involves an act that places either the offender or others on the premises at risk of serious bodily injury.

Effective: September 1, 2012

In 2011, the General Assembly enacted G.S. 20-13.3, providing for an immediate 30-day revocation of the permit or license of a provisional licensee charged with a misdemeanor or felony motor vehicle offense that is a criminal moving violation. Amendments to G.S. 20-13.3 now eliminate the requirement that a provisional licensee charged with a criminal moving violation be arrested and brought before a judicial official for an initial appearance at which the revocation is issued. Instead, a law enforcement officer may issue a citation charging a provisional licensee with a misdemeanor criminal moving violation without arresting the person. When this happens, the officer must notify the provisional licensee that his or her license is subject to revocation and must expeditiously file a revocation report with the clerk of superior court. On determining that the conditions requiring revocation under G.S. 20-13.3 are satisfied, the clerk must issue a revocation order and mail it to the provisional licensee. The ensuing 30-day revocation becomes effective on the fourth day after the order is mailed.

The act also creates a procedure for challenging the lawfulness of a revocation order entered pursuant to G.S. 20-13.3. New G.S. 20-13.3(d2) permits a provisional licensee to request a hearing to contest the validity of the revocation. These review provisions are modeled on those in G.S. 20-16.5(g) for review of license revocations issued by a magistrate or clerk in connection with implied consent charges.

Effective: October 1, 2012

The act amends S.L. 2011-19, as amended by S.L. 2011-307, to extend from October 1, 2012, to July 1, 2013, the time for local forensic laboratories to obtain accreditation pursuant to the requirements of G.S. 8-58.20 and G.S. 20-139.1(c2), which govern the admissibility of certain forensic evidence.

Effective: July 12, 2012

Session Law 2012-185 (House Bill 1074)
Fraudulent Receipt of Decedent's Disability Benefit

The act revises G.S. 135-18.11, which has made it a Class 1 misdemeanor to fraudulently receive a decedent's retirement allowance, to apply that prohibition to the fraudulent receipt of a decedent's monthly benefit under the Disability Income Plan of North Carolina.

Effective: December 1, 2012

Session Law 2012-188 (House Bill 1021)
Justice Reinvestment Act Changes

This act (referred to here as the Clarifications Act) revises the Justice Reinvestment Act (JRA), S.L. 2011-192, as amended by S.L 2011-391 and S.L. 2011-412.

"Quick dip" procedures for probation officers. Under the JRA, probation officers may, in certain cases, impose a short term of jail confinement in response to a probation violation. That confinement has been referred to as a "quick dip." Before imposing a quick dip, a probation officer must advise the probationer of his or her right to a lawyer and hearing on the violation. If the probationer signs a written waiver of those rights, the officer can impose the quick dip. As the JRA was originally written, the waiver had to be witnessed by the probation officer and "a supervisor." The Clarifications Act deletes the requirement for a supervisor to act as a witness and allows another officer (designated by the chief of the Community Corrections Section) to do it instead. The change to the witness requirement was made in both G.S. 15A-1343.2(e) (for community cases) and (f) (for intermediate cases).

Confinement in response to violation for misdemeanors. As originally written, the JRA stated that the period of confinement in response to a violation (a "CRV," sometimes referred to as a "dunk") for a misdemeanant was "up to 90 days" G.S. 15A-1344(d2). The law also stated that if 90 days or less remained on the defendant's suspended sentence the CRV period had to be for the length of that remaining time. Because most misdemeanor sentences were 90 days or less to begin with, the rule almost always trumped the court's authority to order a shorter CRV period; it was unclear from the language of the original statute whether that was the General Assembly's intent. The Clarifications Act expressly excludes misdemeanants from the 90-days-or-less-remaining rule. In other words, the judge may impose a shorter CRV period in any misdemeanor case, up to the time remaining on the defendant's sentence.

Community service fee. The "perform community service" condition added by the JRA as a "community

and intermediate" condition of probation under G.S. 15A-1343(a1)(2) did not expressly require payment of the $250 community service fee described in G.S. 143B-708. The Clarifications Act amends the condition to require the fee.

Effective: July 16, 2012

Post-release supervision changes. The Clarifications Act made the following changes to post-release supervision:

First, amended G.S. 15A-1368.3(c) states that when a person is re-imprisoned for a violation of post-release supervision, his or her period of supervised release is tolled. (There is not a parallel provision tolling a probationer's period of probation during a CRV period.) The amended law also adds that a supervisee is not to be rereleased onto post-release supervision once the supervisee has served all the time remaining on his or her maximum imposed term.

Effective: July 16, 2012

Second, the act amends G.S. 143B-720 to allow the Post-Release Supervision and Parole Commission to hold post-release supervision and parole hearings for all supervisees and parolees and contempt hearings for sex offenders by videoconference.

Effective: December 1, 2012

Third, the act amends G.S. 15A-1368.1 to make clear that the post-release supervision law applies to drug trafficking sentences. The act also adds time to the maximum sentences for drug trafficking in G.S. 90-95(h) to cover defendants' early release onto post-release supervision. The act adds three months to the maximum sentences for Class C, D, and E trafficking (so that maximum sentences in those cases are 120 percent of the minimum plus 12 months) and nine months to the maximum sentences for Class F, G, and H trafficking (so that maximums in those cases are 120 percent of the minimum plus 9 months).

Effective: December 1, 2012

Session Law 2012-193 (House Bill 153)
Forfeiture of Public Retirement Benefits for Certain Felonies and Revised Aggravating Factor in Support of Forfeiture

Statutes governing public employment retirement benefits provide for forfeiture of benefits on conviction of certain offenses, such as buying and selling one's office, if the person was in an elected position, the person committed the offense while serving in that position, and the offense is directly related to the member's service in that position. *See, e.g.,* G.S. 135-75.1 (judicial officials); G.S. 135-18.10 (teachers and state employees). This act adds several new statutes expanding the offenses that trigger forfeiture and making the forfeiture provisions applicable to all employees in the retirement systems covered by those statutes. Thus, new G.S. 135-18.10A prohibits the payment of retirement benefits or allowances, except for return of an employee's own contributions plus interest, to an employee in the Teachers' and State Employees' Retirement System who is convicted of any felony under federal law or the laws of this State if (1) the offense was committed while the employee was in service and (2) the conduct resulting in the conviction was directly related to the employee's office or employment. The new statutes states that the direct relationship in (2) applies to felony convictions where the court finds the aggravating factor in new G.S. 15A-1340.16(d)(9), described below, or under

other applicable state or federal procedures. The forfeiture applies to employees whose benefits have not vested as of December 1, 2012; for employees whose benefits have vested by then, the employees are not entitled to any creditable service accruing on or after December 1, 2012. The act makes similar changes in G.S. 128.38.4A and G.S. 128.26 (Local Government Employees' Retirement System); G.S. 135-75.1A and G.S. 135-56 (judicial retirement); and G.S. 120-4.33A and G.S. 120-4.12 (General Assembly member retirement). The act also provides, in revised G.S. 143-166.30 and G.S. 143-166.50, for forfeiture of contributions to the Supplemental Retirement Income Plans for State and Local Law-Enforcement Officers if the officers' benefits are forfeited under the new statutes.

The act also amends G.S. 15A-1340.16(d)(9), one of the statutory aggravating factors in felony sentencing, to make the factor applicable to a defendant who held public elected or appointed office or public employment at the time of the offense and the offense directly related to the conduct of the office or employment. New G.S. 15A-1340.16(f) states that if the court determines that this aggravating factor has been proven, the court must notify the State Treasurer of the conviction and aggravating factor. The new subsection also requires the State to include notice in the indictment that it intends to prove this factor.

Effective: December 1, 2012

Many of the above summaries were taken, in whole or in part, from the following publication:
2012 Legislation Affecting Criminal Law and Procedure (Aug. 17, 2012) John Rubin, © UNC School of Government