



Police Law Bulletin



City Attorneys' Office

Toni M. Smith, Senior Assistant City Attorney

In this issue:

Legislative Summary – Pgs. 1-23



2017 Legislation Affecting Criminal Law and Procedure



Session law 2017-10 Senate Bill 131

Regulation and Disposition of Reptiles

G.S. 14-419(a) provides that any law enforcement officer with probable cause to believe that any of the provisions of Chapter 14, Article 55 (regulation of venomous snakes, large constricting snakes, and crocodylians) have been or are about to be violated shall investigate and consult with the North Carolina Museum of Natural Sciences or the North Carolina Zoological Park to identify appropriate and safe methods to seize the reptile(s) and deliver them to the Museum or Zoo. The statute is amended to clarify that if a law enforcement officer determines there is an immediate risk to public safety, the officer may kill the reptile without prior consultation with the Museum or Zoo. New G.S. 14-419(b1) provides that upon conviction of any offense in Article 55, the court must order a final disposition of the confiscated reptile(s), which may include transfer of ownership to the State and reimbursement for the necessary expenses incurred in the seizure, delivery, and storage of the animal.

Effective: May 4, 2017

Session Law 2017-22 Senate Bill 53

Authorization for Law Enforcement to Take Custody of a Child That Court Has Determined Is In Danger

G.S. 50-13.5(d)(3) is amended to provide that a temporary custody order which requires a law enforcement officer to take physical custody of a minor child must be accompanied by a warrant to take physical custody of the child as set forth in G.S. 50A-311. G.S. 50A-311 provides that if a court finds that a child is likely to suffer serious physical harm it may issue a warrant directing law enforcement to immediately take physical custody of the child. If the court finds that a less intrusive method is not available, it may authorize law enforcement to enter private premises to take custody of the child and, if required by exigent circumstances, may authorize officers to make forcible entry at any hour. New provisions have been added to this statute providing that (1) an officer executing a warrant to take physical custody of the child that is complete and regular on its face is not required to inquire into the regularity and continued validity of the order; and (2) an officer executing the warrant does not incur criminal or civil liability for its service.

Effective: October 1, 2017

**Session Law 2017-30
House Bill 125**

Threatened Use of a Weapon Added to Elements of First-Degree Forcible Rape and First-Degree Forcible Sexual Offense

G.S. 14-27.21 provides that a person is guilty of first degree forcible rape if the person engages in vaginal intercourse with another person by force and against the will of the other person, and does any of the acts listed in subsection (a)(1)-(3). Subsection (a)(1) is amended to include threatening the use of a weapon in addition to using or displaying it.

G.S. 14-27.26 provides that a person is guilty of first degree forcible sexual offense if the person engages in a sexual act with another person by force and against the will of the other person, and does any of the acts listed in subsection (a)(1)-(3). Subsection (a)(1) is amended to include threatening the use of a weapon in addition to using or displaying it.

Effective: December 1, 2017

**Session Law 2017-31
House Bill 225**

Attempted Armed Robbery is Lesser-Included Offense of Armed Robbery

G.S. 14-87 is amended to clarify that attempted armed robbery is a lesser-included offense of armed robbery; evidence sufficient to prove armed robbery is sufficient to support a conviction of attempted armed robbery.

Effective: December 1, 2017

**Session Law 2017-57
Senate Bill 257**

Substantive Provisions in State Budget

The following summary addresses substantive changes involving criminal law and procedure in the state budget act. Effective dates are included within the section summaries.

Crime victims. Effective June 28, 2017, section 16.6 of the bill amended G.S. 15B-2(1), a part of the Crime Victims Compensation Act, to provide that services for which compensation is allowable include counseling for immediate family members of children under age 18 who are victims of rape, sexual assault, or domestic violence, and family counseling and grief counseling for immediate family members of homicide victims. The limit on such counseling services is \$3,000 per family.

Assault on hospital security personnel. G.S. 14-34.6 makes it a Class I felony to commit an assault or affray on emergency medical technicians and providers, medical responders, hospital personnel, and firefighters. Effective December 1, 2017, section 16B.3 of the bill amended the statute by adding hospital security personnel to the list of covered personnel.

Law enforcement authority and duties. Effective June 28, 2017, section 16B.4 of the bill added G.S. 20-189.1 creating the Executive Protection Detail within the Highway Patrol, consisting of three officers to protect the Lieutenant Governor and immediate family. Effective July 1, 2017, section 16B.9 of the

bill added G.S. 20-189.2 allowing the Speaker of the House and President Pro Tem of the Senate to request a security detail while traveling within the state on state business.

Effective June 28, 2017, section 16B.10 of the bill expands G.S. 143B-919(c) to authorize the State Bureau of Investigation, on request of the Governor or Attorney General, to investigate violations of G.S. 14-43.11 (human trafficking) and G.S. 14-288.21 through 14-288.24 (offenses involving nuclear, biological, and chemical weapons of mass destruction).

Effective June 28, 2017, section 17.2 of the bill amended G.S. 17E-6 to authorize company police agencies to enter into mutual aid agreements with municipalities and, with the county sheriff's consent, a county to the same extent as a municipal police department. The amended statute also provides that company policy may provide temporary assistance to a law enforcement agency at the request of the head of that agency whether or not a mutual aid agreement is in place. In providing temporary assistance, a company police officer has the same powers as law enforcement officers of the agency requesting temporary assistance but may not initiate or conduct an independent investigation into matters outside their subject matter or territorial jurisdiction.

Section 17.7 of the bill requires every local law enforcement agency to conduct an inventory of sexual assault evidence collection kits in its custody or control and report its findings to the State Crime Laboratory by January 1, 2018. The inventory report must include all of the following:

- (1) The total number of sexual assault evidence collection kits in the agency's custody or control that have not previously undergone forensic testing;
- (2) Of the total number of sexual assault evidence collection kits in the agency's custody or control, the number that:
 - a. Are anonymous (meaning the identity of the victim of sexual assault is not associated with the sexual assault evidence collection kit because the victim has not reported the assault to law enforcement);
 - b. Represent a case that has been resolved in court whether by conviction, dismissal, or another manner;
 - c. Were not submitted for forensic testing because the suspect admitted to the sexual act in question; and
 - d. Were not submitted for forensic testing because the allegations were determined to be unfounded as a result of further investigation, including the total number of kits that have not undergone forensic testing.

Juvenile justice. Section 16D.4, entitled the Juvenile Justice Reinvestment Act, increases the age of juvenile court jurisdiction to include crimes committed by 16 and 17-year-olds, except for motor vehicle offenses, and expedites transfer to adult court for 16 and 17-year-olds who commit Class A-G felonies. The Act also makes several other changes to the Juvenile Code, which are summarized below. Most of the substantive provisions of the Act do not become effective until December 1, 2019 although a few provisions have already gone into effect. Effective dates are specified below.

Definitions - Effective December 1, 2019

- Delinquent Juvenile – As defined by amended G.S. 7B-1501(7) and amended G.S. 143B-805(6), the term “delinquent juvenile” includes 16 and 17-year-olds who commit crimes or infractions, excluding motor vehicle offenses.
- Victim – New G.S. 7B-1501(27a) defines a “victim” as an individual or entity against whom a crime or infraction has been committed by a juvenile when there are reasonable grounds that the allegations are true. For purposes of Article 17 (screening of complaints), a “victim” also includes the parent, guardian, or custodian of a victim who is under 18.

Juvenile Court Jurisdiction - Effective December 1, 2019

- Offenses committed before age 16 – Under amended G.S. 7B-1601(b) and (c), jurisdiction of the juvenile court continues until age 18, unless terminated earlier by the court or the Juvenile Code provides otherwise. If a disposition cannot be entered before the juvenile turns 18, the court retains jurisdiction to conduct probable cause and transfer hearings and either transfer the case to superior court or dismiss the petition.
- Offenses committed at age 16 – Under new G.S. 7B-1601(b1) and (c1), jurisdiction of the juvenile court continues until age 19, unless terminated earlier by the court or the Juvenile Code provides otherwise. If a disposition cannot be entered before the juvenile turns 19, the court retains jurisdiction to conduct probable cause and transfer hearings and either transfer the case to superior court or dismiss the petition.
- Offenses committed at age 17 – Under new G.S. 7B-1601(b1) and (c1), jurisdiction of the juvenile court continues until age 20, unless terminated earlier by the court or the Juvenile Code provides otherwise. If a disposition cannot be entered before the juvenile turns 20, the court retains jurisdiction to conduct probable cause and transfer hearings and either transfer the case to superior court or dismiss the petition.
- Continuing jurisdiction over felonies and related misdemeanors – Under new G.S. 7B-1601(d1), after a juvenile reaches age 19 (for offenses committed at age 16) or age 20 (for offenses committed at age 17), the juvenile court's original jurisdiction over felonies and related misdemeanors continues indefinitely for the sole purpose of conducting probable cause and transfer hearings and either transferring the case to superior court or dismissing the petition.
- Adult prosecution – Under amended G.S. 7B-1604, a juvenile must be prosecuted as an adult for all offenses committed (1) on or after the juvenile's 18th birthday, (2) after the juvenile has been transferred to and convicted in superior court for a prior offense, and (3) after the juvenile has been convicted of a felony or misdemeanor, including motor vehicle offenses, in district or superior court.

Probable Cause and Transfer to Superior Court - Effective December 1, 2019

- Probable cause hearing – Amended G.S. 7B-2202 provides that a probable cause hearing is required for all felonies committed by a juvenile at age 13 or older, except for cases subject to mandatory transfer by indictment under new G.S. 7B-2200.5. When transfer is not mandatory, the court may proceed to a transfer hearing or set a date for that hearing after a finding of probable cause. The juvenile is entitled to at least 5 days notice of the transfer hearing.
- Transfer of 13, 14, and 15-year-olds – Amended G.S. 7B-2200 provides that a transfer hearing is required to transfer jurisdiction to superior court for a felony committed by a juvenile at age 13, 14, or 15, except for Class A felonies which are subject to mandatory transfer upon a finding of probable cause.
- Transfer of 16 and 17-year-olds – New G.S. 7B-2200.5 creates an expedited process to transfer jurisdiction to superior court for certain felonies committed by 16 and 17-year-olds.
 - Transfer to superior court is mandatory for a Class A-G felony committed by a juvenile at the age of 16 or 17 after (1) notice that an indictment has been filed, or (2) the court enters a finding of probable cause after notice and a hearing.
 - Transfer to superior court for a Class H or I felony committed by a juvenile at the age of 16 or 17 requires notice, a finding of probable cause, and a transfer hearing.
- Pre-trial release – Amended G.S. 7B-2603(b) removes language regarding procedures for the pre-trial release and detention of juveniles who appeal from an order transferring jurisdiction to superior court. The statute now provides that any detention of the juvenile pending release shall be in accordance with G.S. 7B-2204.

- Sex offender Registration – Amended G.S. 14-208.6B provides that registration requirements for juveniles who are transferred to superior court and convicted of a sexually violent offense or an offense against a minor as defined in G.S. 14-208.6 are applicable when transfer occurs pursuant to either G.S. 7B-2200 or new G.S. 7B-2200.5.

Disposition - Effective December 1, 2019

- Dispositional Alternatives – Amended G.S. 7B-2506 sets new age limits for certain dispositional alternatives.
 - o G.S. 7B-2506(1), which authorizes out of home placement options for juveniles, including placement of the juvenile in the custody of a county department of social services, is now applicable to any juvenile who is under the age of 18.
 - o G.S. 7B-2506(2), which authorizes a court to excuse a juvenile from compliance with the compulsory school attendance law, is applicable only to juveniles who are under the age of 16.
- Delinquency History Level – Amended G.S. 7B-2507 provides for including prior criminal convictions in determining a juvenile’s delinquency history level. Prior misdemeanor and felony convictions are assigned the same number of points as prior delinquency adjudications of the same class of offense. Other conforming changes provide that the rules regarding multiple prior delinquency adjudications obtained in one court session, classification of prior adjudications from other jurisdictions, and proof of prior adjudications also apply to prior convictions.
- Commitment to Youth Development Centers
 - o Offenses committed before age 16 – Under new G.S. 7B-2513(a1), the previous age limits for a juvenile’s maximum commitment term are applicable to offenses committed by a juvenile prior to age 16.
 - o Offenses committed at age 16 – New G.S. 7B-2513(a2) provides that a commitment term for an offense committed at age 16 may not exceed the juvenile’s 19th birthday.
 - o Offenses committed at age 17 – New G.S. 7B-2513(a3) provides that a commitment term for an offense committed at age 17 may not exceed the juvenile’s 20th birthday.
 - o Maximum Commitment – New G.S. 7B-2513(a4) sets forth the existing rule that a juvenile’s maximum commitment term may not exceed the maximum adult sentence for the same offense unless the Division determines that the commitment should be extended to continue a plan of care or treatment, as provided by G.S. 7B-2515.
- Notification of Extended Commitment
 - o Offenses committed before age 16 – G.S. 7B-2515(a) was amended to make the existing rules requiring written notice of an extended commitment applicable only to offenses committed by a juvenile prior to age 16.
 - o Offenses committed at age 16 – New G.S. 7B-2515(a1) requires that written notice of an extended commitment must be provided to the juvenile and the juvenile’s parent, guardian, or custodian at least 30 days before the end of the maximum commitment period or 30 days before the juvenile’s 19th birthday. The notice must include the proposed additional commitment period, the basis for the proposed extended commitment, and the plan for future care or treatment.
 - o Offenses committed at age 17 – New G.S. 7B-2515(a2) requires that written notice of an extended commitment must be provided to the juvenile and the juvenile’s parent, guardian, or custodian at least 30 days before the end of the maximum commitment period or 30 days before the juvenile’s 20th birthday. The notice must include the proposed additional commitment period, the basis for the proposed extended commitment, and the plan for future care or treatment.

- o Right to Review Hearing – Upon notice of a proposed extended commitment pursuant this section, the juvenile and the juvenile’s parent, guardian, or custodian may request review by the court.

Juvenile Gang Suppression - Effective December 1, 2019

- Gang Assessment – Amended G.S. 7B-1702 requires a juvenile court counselor to conduct a gang assessment during the evaluation of a complaint to determine whether it should be filed as a juvenile petition. Section 16D.4.(ff), which became effective on July 1, 2017, directs the Division of Adult Correction and Justice to develop a gang assessment instrument in consultation with the administrator of the GangNET database maintained by the NC State Highway Patrol, and with other entities, if deemed necessary.
- Gang Assessment Results – Amended G.S. 7B-3001(a) provides that the juvenile court counselor’s record must contain the results of the gang assessment.
- Enhancement of Disposition Level – New G.S. 7B-2508(g1) creates an exception to the disposition chart set out in G.S. 7B-2508(f) which requires that a juvenile’s disposition level be increased one level higher than provided for by the chart when the court finds that the adjudicated offense was committed as part of criminal gang activity, as defined by new G.S. 7B-2508.1.
- Criminal Gang Activity Definitions – New G.S. 7B-2508.1 creates the following definitions which apply to Article 25 of the Juvenile Code:
 - o Criminal gang – New G.S. 7B-2508.1(1) defines the term “criminal gang” as any ongoing association of three or more persons, whether formal or informal, that (1) engages in criminal or delinquent acts as one of its primary activities and (2) shares a common name, identification, or other distinguishing characteristics such as signs, symbols, tattoos, graffiti, or attire. The term does not include an association of three or more persons who are not engaged in criminal gang activity.
 - o Criminal gang activity – New G.S. 7B-2508.1(2) defines the term “criminal gang activity” to include the commission of, attempted commission of, or solicitation, coercion, or intimidation of another person to commit (1) any NC Controlled Substances Act offense or (2) any criminal offense under Chapter 14 of the General Statutes, excluding certain enumerated offenses, when either of the following conditions is met:
 - The offense is committed with the intent to benefit, promote, or further the interests of a criminal gang or increase a person’s own standing within a criminal gang.
 - The participants in the offense are identified as criminal gang members acting individually or collectively to further any purpose of a criminal gang.
 - o Criminal gang member – New G.S. 7B-2508.1(3) defines the term “criminal gang member” as any person who meets three or more of the nine criteria set forth in the statute.

Transportation of Juveniles - Effective December 1, 2019

New G.S. 143B-806(b)(20) grants authority to the Secretary of the Division of Adult Correction and Juvenile Justice to provide for the transportation to and from State or local juvenile facilities of any person under the jurisdiction of juvenile court.

Felony Notification of Schools - Effective December 1, 2019

- Notification of Transfer to Superior Court – Amended G.S. 7B-3101(a)(2) provides that a juvenile court counselor must provide verbal and written notification to the principal of the

juvenile's school if the juvenile's case is transferred to superior court under new G.S. 7B-2200.5.

- Destruction of Records – Amended G.S. 115C-404(a) requires a principal who receives confidential juvenile records under G.S. 7B-3100 to destroy them upon notification that the student's case has been transferred to superior court under G.S. 7B-2200 or new G.S. 7B-2200.5 (previously under G.S. 7B-2200).

Contempt by a Juvenile - Effective December 1, 2019

- Definition – Amended G.S. 5A-31(a) provides that contempt by a juvenile may be committed by any juvenile who is at least 6, not yet 18 (previously 16), and has not been convicted of any crime in superior court.
- Criminal or Civil Contempt by Adults – Amended G.S. 5A-34(b) provides that criminal and civil contempt procedures set forth in Articles 1 and 2 of Chapter 5A apply to minors who (1) are married or otherwise emancipated or (2) have been previously convicted in superior court of any offense. The amendment removed language which previously made criminal and civil contempt procedures applicable to minors who are 16 or older.

Contributing to the Delinquency, Abuse, or Neglect of a Minor - Effective December 1, 2019

Amended G.S. 14-316.1 makes the offense of contributing to the delinquency, abuse or neglect of a minor applicable to persons who are at least 18 (previously 16).

Victim's Rights - Effective October 1, 2017

- Notification of Filing Decision – Amended G.S. 7B-1703(c) requires a juvenile court counselor to provide written notification to both complainants and victims (previously only complainants) of a decision not to file a complaint as a juvenile petition. The notification must include specific reasons for the decision, whether or not legal sufficiency was found, and whether the matter was closed or diverted and retained. The notification also must inform the complainant and victim of the right to have the decision reviewed by a prosecutor.
- Request for Review by Prosecutor – Amended G.S. 7B-1704 makes conforming changes to provide that the procedure for requesting review of a juvenile court's filing decision applies to both complainants and victims (previously complainants only).
- Prosecutor's Review and Decision – Amended G.S. 7B-1705 makes conforming changes to provide that a prosecutor's review of a court counselor's filing decision must include conferences with the complainant, victim, and juvenile court counselor (previously complainant and juvenile court counselor only). A prosecutor also must notify both the complainant and the victim of his or her decision at the conclusion of the review.
- Victim's Access to Information – New G.S. 143B-806(b)(14a) grants authority to the Secretary of the Division of Adult Correction and Juvenile Justice to develop and administer a system to inform victims and complainants about the status of pending complaints and the right to request review under G.S. 7B-1704 of a juvenile court counselor's decision not to file a complaint.

Law Enforcement Access to Information - Effective October 1, 2017

- Consultations with Law Enforcement – Amended G.S. 7B-3001(a) provides that the juvenile court counselor's record must include the juvenile's delinquency record and consultations with law enforcement that do not result in the filing of a juvenile petition. **A separate amendment to G.S. 7B-3001(a) also requires the inclusion of a gang assessment as part of this record.

- Disclosure of Information to Law Enforcement – New G.S. 7B-3001(a1) authorizes juvenile court counselors to share with law enforcement officers, upon request, information related to a juvenile’s delinquency record or prior consultations with law enforcement for the purpose of assisting officers during the investigation of an incident that could lead to the filing of a complaint. Law enforcement officers may not obtain copies of juvenile records and must maintain the confidentiality of information shared and keep it separately from other law enforcement records, as required by G.S. 7B-3001(b).

Electronic Records - Effective July 1, 2017

Section 16D.4.(y) of the Act requires that by July 1, 2018, the Administrative Office of the Courts (AOC) must expand access to JWisE, the automatic electronic information management system for juvenile courts, to include prosecutors and juvenile defense attorneys. Such access must be limited to examining electronic records related to juvenile delinquency proceedings and does not include records related to abuse, neglect, and dependency or termination of parental rights cases. Section 16D.4.(z) requires that by July 1, 2018, the AOC must also develop statewide inquiry access for JWisE users that corresponds to the access to juvenile court records authorized by Chapter 7B.

School-Justice Partnerships - Effective July 1, 2017

New G.S. 7A-343(9g) authorizes the Director of the AOC to prescribe policies and procedures for chief district court judges to establish school-justice partnerships in collaboration with local law enforcement agencies, local boards of education, and local school administrative units for the purpose of reducing in-school arrests, out-of-school suspensions, and expulsions.

Juvenile Justice Training for Law Enforcement Officers and Sheriffs - Effective July 1, 2017

- Entry-level Training – New G.S. 17C-6(a)(2)(b) and new G.S. 17E-4(a)(2)(b) provide that the minimum standards for entry-level employment established by the NC Criminal Justice Education and Training Standards Commission and the NC Sheriffs’ Education and Training Standards Commission must include education and training on juvenile justice issues. The minimum standards must include education and training regarding (1) the handling and processing of juvenile matters for referrals, diversion, arrests, and detention; (2) best practices for handling incidents involving juveniles; (3) adolescent development and psychology; and (4) promoting relationship building with youth as a key to delinquency prevention.
- In-Service Training – New G.S. 17C-6(a)(14)(b) and new G.S. 17E-4(a)(11)(b) provide that the minimum standards for in-service training established by both Commissions must include training on juvenile justice issues that includes the same information required for entry-level employment.
- Instructor Certification – Amended G.S. 17C-6(a)(15) and amended G.S. 17E-4(a)(12) authorize both Commissions to establish minimum standards for certification of instructors for the entry-level and in-service juvenile justice training for criminal justice officers and sheriffs.
- Consultation with Juvenile Justice – Section 16D.4.(dd) directs both Commissions to work with the Division of Adult Correction and Juvenile Justice to establish juvenile justice training.

Juvenile Jurisdiction Advisory Committee - Effective July 1, 2017

Sections 16D.4.(kk) through 16D.4.(ss) provide for the establishment of a 21-member Juvenile Jurisdiction Advisory Committee within the Division of Adult Correction and Juvenile Justice to plan for the implementation of these changes. Appointments to the Advisory Committee must be made no later than October 1, 2017. The Advisory Committee must submit an interim report to the General Assembly by March 1, 2018, and must submit a final report by January 15, 2023.

Human trafficking. Effective June 28, 2017, section 17.4 requires the following entities under the indicated statutes to display a sign provided by the North Carolina Human Trafficking Commission that contains the National Human Trafficking Resource hotline information: adult establishments (G.S. 14-202.13); ABC permittees (G.S. 18B-1003(c1)); places described in G.S. 19-1.2 involving lewd films, lewd publications, and other acts declared to be nuisances (G.S. 19-8.4); hospitals, (G.S. 131E-84.1); transportation stations, rest areas, and state welcome centers (G.S. 143B-348); and JobLink and other centers offering employment and training services (G.S. 143B-431.3). The section does not specify penalties for a violation.

Court costs. Effective June 28, 2017, section 18B.5 amended G.S. 7A-304(a) to create the following additional court costs to be imposed upon conviction:

- \$600 for the services of the State Crime Lab if as part of the investigation leading to conviction the Crime Lab performed digital forensics, to be remitted to the Department of Justice for support of the Crime Lab;
- \$600 for the services of a local crime lab operated by a local government if as part of the investigation leading to conviction the local lab performed digital forensics and the court finds that the work by the local lab is the equivalent of the work performed by the State Crime Lab, to be remitted to the local law enforcement unit for lab purposes;
- \$600 for the services of an expert witness employed by the State Crime Lab who completes a digital forensic analysis and testifies at trial, which is in addition to the new \$600 cost for the performance of the digital forensics and is to be remitted to the Department of Justice for support of the Crime Lab; and
- \$600 for the services of an expert witness employed by a local crime lab operated by a local government who completes a digital forensic analysis and testifies at trial, which is in addition to the new \$600 cost for the performance of the digital forensics and is to be remitted to the local government unit for support of the lab.

Effective on or after December 1, 2017, section 18B.6 amends G.S. 7A-304(a) to prohibit a court from waiving or remitting any court fines or costs without providing notice and an opportunity to be heard by all government entities directly affected. At least 15 days ahead of time, the court must give notice by first-class mail to the government entities of the date and time of the hearing and the right to be heard and object.

Session Law 2017-69 Senate Bill 326

Misrepresentation Offenses in Connection with Automobile Insurance

G.S. 58-2-164(b)(1) and (2) are amended eliminating the provisions making it a Class 3 misdemeanor to present, or assist another in presenting, false or misleading information that a vehicle registration applicant is an eligible risk when the applicant is not an eligible risk. The statute continues to make it a Class 3 misdemeanor to present, or assist another in presenting, such information in support of an application for automobile insurance.

New G.S. 20-53.5 requires DMV to register and title high-mobility multipurpose wheeled vehicles (HMMWVs or Humvees) when the applicant provides to DMV an affidavit from the manufacturer, dealer, or seller certifying that the vehicle complies with all applicable federal motor vehicle safety standards for vehicles designed for highway use, and the vehicle has a VIN matching the vehicle ownership documents. All provisions of Chapter 20 apply to the HMMWV certain conditions are met.

Effective: July 1, 2017

**Session Law 2017-87
Senate Bill 155****Changes to Alcoholic Beverage Control (ABC) Commission Laws**

By loosening various alcohol restrictions, this bill makes conduct lawful that could previously have been punished as a Class 1 misdemeanor under G.S. 18B-102(b), the general punishment provision for violations of Chapter 18B.

- Effective July 1, 2017, G.S. 18B-1105(5) allows distilleries to sell up to five bottles of spirituous liquor, instead of just one bottle, to a consumer every 12 month period.
- New G.S. 18B-1114.7 allows certain permittees, including distilleries, to conduct consumer tastings as provided in the statute. An authorized tasting does not violate G.S. 18B-301(f), which otherwise prohibits consumption or offering of spirituous liquor on any public road, street, highway, or sidewalk.
- New G.S. 18B-603(f)(10) and G.S. 18B-1002.1 allow a licensed auctioneer to obtain a permit to sell at auction wine, decorative decanters of spirituous liquor, or antique spirituous liquor. New G.S. 18B-1002(a)(4) allows a collector to obtain a permit authorizing him or her to bring into the state, transport, or collect more than two of the above beverages, and to sell those beverages as prescribed by the ABC Commission.
- Commonly known as the “Brunch Bill,” G.S. 18B-1004(c), G.S. 153A-145.7, G.S. 160A-205.3, and G.S. 18B-112(b1) were amended so that cities, counties, and the Eastern Band of Cherokee Indians may adopt ordinances allowing the sale of malt beverages, unfortified wine, fortified wine, and mixed beverages beginning at 10:00 a.m. on Sundays pursuant to a licensed premises’ permit.
- Amended G.S. 18B-1001(1-4, 16) allows retail permittees to sell, for consumption off premises, malt beverages and unfortified wine in cleaned and sanitized containers that are filled and sealed for consumption off premises.
- Amended G.S. 18B-1001(3)(j) adds retail businesses to the list of establishments that may obtain an on-premises unfortified wine permit.
- Amended G.S. 18B-1104(6) allows the holder of a brewery permit to give its products to customers, visitors, and employees (formerly written as employees and guests) for consumption on the premises.
- New G.S. 18B-1121 allows a commercial permittee, its agent, or employee to consume, free of charge, samples of alcoholic beverages it is licensed to sell on its premises for purposes of sensory analysis, quality control, or education.
- Home brewers have been allowed to make and use wines and malt beverages according to certain specification governing its makeup. For example, wines had to be made primarily from honey, grapes, other fruits or grains grown in this State, or wine kits containing honey, grapes, or fruit or grain concentrates. Amended G.S. 18B-306 continues to allow individuals to make, possess, and transport wine and malt beverages but removes these specifications. In addition to allowing consumption by the individual, family, and guests, the amended statute allows use at organized affairs, exhibitions, or competitions. A permit is not required. Sale is prohibited.
- Amended G.S. 18B-1104(7)(c) allows a brewery, upon receiving the appropriate permit, to sell other alcoholic beverages in addition to its malt beverages.
- New subsection (7a) was added to G.S. 18B-1104 so that, in an area where the sale of malt beverages is not authorized, a brewery that produces agricultural products used by the brewery to manufacture malt beverages may sell the malt beverages at the brewery, for on- or off-premises consumption, if the brewery obtains an appropriate permit from the State and approval from the governing body of the city or county where it is located.

- Amended G.S. 18B-1114.1 adds farmers markets to the list of locations at which the holder of certain winery permits may give free tastings and sell its wine.

Effective: June 30, 2017 unless otherwise noted

**Session Law 2017-89
House Bill 98**

Intentional Injury to or Interference with Firefighting and Emergency Medical Services Equipment

New G.S. 14-160.3 was created making it a Class 1 misdemeanor for a person to intentionally injure, destroy, remove, vandalize, tamper with, or interfere with the operation of

- any machinery, apparatus, or equipment used by a fire department or North Carolina Forest Services for fighting fires or protecting human life or property, or
- any ambulance, rescue squad emergency medical services vehicle, or equipment or apparatus used for emergency medical services as defined in G.S. 131E-155.

Effective: December 1, 2017

**Session Law 2017-92
House Bill 343**

Domestic Violence Protective Orders

Under G.S. 1-294, an appeal stays all further proceedings in the court below regarding the judgment appealed from (although not other matters included in the action and not affected by the judgment). A new subsection (g) was added to G.S. 50B-4(g) providing that, notwithstanding G.S. 1-294, a valid domestic violence protective order is enforceable in the trial court during the pendency of the appeal—for example, by contempt for a violation. The new provision provides that the appellate court in which the appeal is pending may stay a trial court order until the appeal is decided if justice so requires. The act also adds G.S. 50B-3(b2) to provide that a court may modify a domestic violence protective order on written request of either party at a hearing after notice or service of process and on a finding of good cause.

Effective: October 1, 2017

**Session Law 2017-93
House Bill 399**

Disclosure of Private Images Without Consent

G.S. 14-190.5A was amended to broaden the circumstances in which disclosure of private images constitutes a crime. G.S. 14-190.5A(b) lists five elements of the offense. The fifth element was that the person disclosed the image under circumstances that the person knew or should have known that the depicted person had a “reasonable expectation of privacy.” For there to be a “reasonable expectation of privacy,” the depicted person must have consented to disclosure of the image within the context of a personal relationship, as that term is defined in G.S. 50B-1(b), and the depicted person reasonably believed that disclosure would not go beyond that relationship. The fifth element of the offense has been revised to simply require that the person obtained the image without consent of the depicted person or under circumstances that the defendant knew or should have known that the depicted person expected the

images to remain private. Requirements of, and references to, a “personal relationship” and “reasonable expectation of privacy” have been deleted. The definition of “image” is also broadened to include live transmissions and any reproduction made by electronic, mechanical, or other means. The act also directs the Joint Legislative Oversight Committee on Justice and Public Safety to study the issue of improper disclosure of an image of a person superimposed onto another image of exposed intimate parts or sexual conduct, including whether existing crimes or civil actions apply and whether G.S. 14-190.5A should be further amended to include superimposed images.

Effective: December 1, 2017

**Session Law 2017-94
Senate Bill 600**

Domestic Violence Homicide

A new subsection (a1) was added to G.S. 14-17 to provide that there is a “rebuttable presumption” that a murder is willful, deliberate, and premeditated and is a Class A felony—that is, first-degree murder—if the following circumstances are present:

- the murder was perpetrated with malice as that term is described in subsection (b)(1) of the statute i.e. “an inherently dangerous act or omission, done in such a reckless and wanton manner as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief”;
- the murder was committed against a spouse, former spouse, a person with whom the defendant lives or has lived as if married, a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), or a person with whom the defendant shares a child in common; and
- the defendant has previously been convicted of one of the following offenses involving the same victim
 - an act of domestic violence as defined in G.S. 50B-1(a),
 - a violation of a domestic violence protective order under G.S. 50B-4.1 or G.S. 14-269.8 if the same victim is the subject of the protective order,
 - communicating a threat under G.S. 14-277.1,
 - stalking under G.S. 14-277.3A,
 - cyberstalking under G.S. 14-196.3, or
 - domestic criminal trespass under G.S. 14-134.3.

Effective: December 1, 2017

**Session Law 2017-95
House Bill 21**

Driver Instruction on Law Enforcement Procedures During Traffic Stops

G.S. 20-88.1(d) is amended to require the Division of Motor Vehicles to include in the driver license handbook a description of law enforcement procedures during a traffic stop and the actions a motorist should take during a traffic stop, including appropriate interactions with law enforcement officers. Effective for the 2017-18 school year, the act amends G.S. 115A-215(b) to require that the driver education curriculum include instruction on the same matters. The act requires DMV to consult with the North Carolina Sheriff’s Association and North Carolina Association of Chiefs of Police in developing the materials and instruction.

Effective: January 1, 2018

Session Law 2017-101
House Bill 224

Identification of Outstanding Arrest Warrants

G.S. 15A-301.1(p) was enacted in 2015 to address the problem of unserved warrants on defendants who have other pending criminal charges. It required the court, prior to entry of any order in a criminal case, to attempt to identify all outstanding warrants against the individual, and to notify the appropriate law enforcement agencies of the individual's location. The statute is amended so that the requirements only apply to the court when a defendant is in custody.

Effective: December 1, 2017

Session Law 2017-96
House Bill 27

Expiration of Registration for vehicle with New Registration Plate

G.S. 20-66(g1) is amended to provide that the registration of a vehicle renewed by a new registration plate expires on the last day of the year on which the registration plate was issued. The amendment further provides though that it is lawful to operate the vehicle on a highway through February 15 of the following year.

Effective: July 12, 2017

Session Law 2017-97
House Bill 95

Transportation of Cargo by Oversized Vehicles

The Department of Transportation (DOT) may issue special permits allowing vehicles that exceed otherwise applicable size and weight limits to be driven on roadways maintained by the State. New G.S. 20-119(b3) provides that for a special permit issued for the transport and delivery of cargo, containers, and other equipment, DOT may allow travel after sunset if it determines such travel will be safe and will expedite traffic flow. The new subsection prohibits DOT from issuing a special permit that bars travel after sunset for shipments going to or from international ports.

Effective: July 12, 2017

Session Law 2017-102
House Bill 229

Technical Corrections Act

The act made the following substantive changes to criminal law and procedure.

Sex offender registration. Effective December 1, 2015, Section 5 of the act amended G.S. 14-208.6(5) to include first-degree statutory rape (G.S. 14-27.4) in the definition of "sexually violent offense" for purposes of sex offender registration.

Conditional discharge for marijuana drug paraphernalia. Effective July 12, 2017, Section 38 amended G.S. 90-96(a), which authorizes a conditional discharge for certain drug-related offenses, to include possession of marijuana drug paraphernalia under G.S. 90-113.22A as well as possession of other

drug paraphernalia under G.S. 90-113.22. This change also applies to conditional discharges under G.S. 90-96(a1) because that subsection covers offenses described in G.S. 90-96(a).

Session Law 2017-111
Senate Bill 160

Medical Certifications for Handicapped Licenses or Placards

To obtain a license plate or windshield placard that permits a vehicle to be parked in a handicapped parking place, an applicant must submit a certification by a medical professional stating that the applicant is handicapped or a similar determination by the Division of Services for the Blind or the U.S. Department of Veteran's Affairs. G.S. 20-37.6(c1) is amended to permit certifications by a licensed physician assistant or a licensed nurse practitioner in addition to a licensed physician, a licensed ophthalmologist, and a licensed optometrist. In addition, the act amended G.S. 20-37.6(c1) to permit an initial application for a temporary removable windshield placard to be accompanied by a certification from a licensed certified nurse midwife.

Effective: July 12, 2017

Session Law 2017-112
Senate Bill 182

Light Bars on Vehicles Prohibited

New subsection (f) is added to G.S. 20-130(f) prohibiting a person from driving a motor vehicle on a street or highway while using a light bar lighting device, defined as a bar-shaped lighting device comprised of multiple lamps that project a beam of light of an intensity greater than 25 candlepower. Violation of this provision is an infraction. The light bar ban does not apply to motorcycles, school buses, ambulances, law-enforcement vehicles, fire department vehicles, or other types of vehicles described in G.S. 20-130(d) and G.S. 20-130.1(b). The new subsection does not apply to or restrict use of a light bar lighting device with strobing lights.

Effective: October 1, 2017

Session Law 2017-115
House Bill 464

Changes to Controlled Substance Schedules; Murder by Unlawful Distribution of Certain Controlled Substances; Creation of Opioid Sentencing Task Force

Definitions. The definition of "isomer" in G.S. 90-87(14a) is revised to include any type of isomer, including structural, geometric, or optical isomers, and stereoisomers. The definition of "narcotic drug" in G.S. 90-87(17)a. is revised to include opioids in addition to opium and opiates. "Opioid" is defined in new G.S. 90-87(18a) as any synthetic narcotic drug having opiate-like activities but not derived from opium.

Opioids. Opioids are included along with opiates as a Schedule I controlled substance in revised G.S. 90-89(1) to the extent that they involve the listed chemical designations, which the act expands. The revised statute excepts levo-alphaacetylmethadol, also known as levomethadyl acetate or LAAM, from the chemical designation for alphaacetylmethadol, a Schedule I opiate; the substance remains a Schedule II opiate. Opioids are also designated as a Schedule II controlled substance in revised G.S. 90-90(1) and (2) to the extent that they involve the listed substances. Revised G.S. 90-90(1) modifies the definition of

hydrocodone, a Schedule II controlled substance, to include any material, compound, mixture, or preparation containing any quantity of hydrocodone.

Synthetic cannabinoids. New G.S. 90-89(7) classifies synthetic cannabinoids, described in the new provision, as a Schedule I controlled substance. G.S. 90-94(3), which classified synthetic cannabinoids as a Schedule VI controlled substance, is repealed. Section 11 of the act revises G.S. 90-95(b) to repeal the provision providing that the transfer of less than 2.5 grams of a synthetic cannabinoid for no remuneration does not constitute delivery in violation of G.S. 90-95(a)(1); and revises G.S. 90-95(d) to repeal the provisions making possession of 7 grams or less of a synthetic cannabinoid a Class 1 misdemeanor and 21 grams or less a Class I felony.

Fentanyl derivatives. Derivatives of fentanyl, described in new G.S. 90-89(1a), are added as a Schedule I controlled substance. Fentanyl remains a Schedule II controlled substance under G.S. 90-90(2).

Other Schedule I controlled substances. Various chemical designations are added in revised G.S. 90-89(3) as Schedule I hallucinogenic substances. Various chemical designations are added in revised G.S. 90-89(4) as Schedule I systemic depressants. The definition of substituted cathinones, a Schedule I stimulant described in G.S. 90-89(5)j. is revised.

Schedule III. Dihydrocodeine is a Schedule II controlled substance under G.S. 90-90(2) unless it is less than a certain quantity, in which case it is a Schedule III controlled substance under G.S. 90-91(d). The act repeals G.S. 90-91(d)3. and 4., which classified certain amounts of dihydrocodeine as a Schedule III controlled substance. G.S. 90-91(d)5. continues to classify certain amounts of dihydrocodeine as a Schedule III controlled substance. Revised G.S. 90-91(d) also includes buprenorphine as a Schedule III controlled substance; it was a Schedule IV controlled substance under G.S. 90-92(a)(5). Revised G.S. 90-91(k) adds certain substances as Schedule III anabolic steroids.

Schedule IV. Revised G.S. 90-92(a)(1) adds certain substances as Schedule IV depressants, and revised G.S. 90-92(a)(5) adds tramadol as a Schedule IV narcotic drug and removes buprenorphine.

Schedule V. New G.S. 90-93(a)(4) makes the listed anitconvulsants a Schedule V controlled substance.

Murder by unlawful distribution of certain substances. G.S. 14-17(b)(2) has classified as second-degree murder, punishable as a Class B2 felony, a murder proximately caused by the unlawful distribution of certain drugs, including opium, cocaine, and methamphetamine, where ingestion of the drugs caused the death of the user. The revised statute adds opiates and opioids and the depressants described in G.S. 90-92(a)(1).

Task force. Effective July 18, 2017, the Act created the Task Force on Sentencing Reforms for Opioid Drug Convictions, consisting of 22 members appointed as provided in the act as well as ex officio members, with the same voting rights, of certain agencies. The Task Force's purpose is "to study and review cases of inmates who are incarcerated solely for convictions of opioid drug offenses that require active sentences under structured sentencing; to consider how to identify inmates who would be able to successfully reintegrate into society; and to develop and consider options for modifying existing statutes." The Task Force must submit an interim report to the General Assembly when it reconvenes in 2018 and a final report to the 2019 General Assembly.

Effective: December 1, 2017 unless otherwise noted

Session Law 2017-151
Senate Bill 548

Human Trafficking; Massage and Bodywork Therapy

G.S. 14-43.11 is amended increasing the punishment for human trafficking from a Class F to Class C felony and, if the victim is a minor, from a Class C to Class B2 felony.

Effective: December 1, 2017

Subsection (a1) of G.S. 14-202.11 is created prohibiting massage and bodywork therapy, as defined in Article 36 of G.S. Ch. 90, in an adult establishment. The reference to massage and bodywork therapy is deleted from G.S. 14-201.10, the definitions statute for adult establishments. Licensure requirements have been added in order to operate a massage and bodywork therapy establishment. Amended G.S. 90-629.1 requires applicants for a license to practice massage and bodywork therapy or to operate a massage and bodywork therapy establishment to consent to a criminal history check. New G.S. 90-632.15 provides that the North Carolina Board of Massage and Bodywork Therapy may deny, suspend, revoke, or refuse a license if the person has pled guilty, entered a no contest plea, or been found guilty of a crime involving moral turpitude by a judge or jury in state or federal court.

Effective: October 1, 2017

New G.S. 90-634(b3) and (b4) make it a Class 1 misdemeanor to engage in various acts involving a person who is not licensed or exempted to provide massage and bodywork therapy services, including employing or contracting with an unlicensed, non-exempt person for such services.

Effective: December 1, 2017

**Session Law 2017-158
House Bill 236**

Miscellaneous Civil, Criminal, and Court Changes

Audio-video transmission of district court civil commitment hearings. G.S. 122C-268 has allowed commitment hearings under that statute to be conducted by interactive videoconferencing. G.S. 122C-268(g) is amended to provide that the procedures and type of equipment must be approved by the AOC and that the respondent must be able to communicate fully and confidentially with his or her attorney during the proceeding.

Termination of sex offender registration. G.S. 14-208.12A(a) provides that a person required to register as a sex offender in North Carolina based on an out-of-state conviction must file a petition to terminate registration in the district where the person resides. The petitioner also must give notice to the sheriff of the county where he or she is registered as provided in that subsection. G.S. 14-208.12A(a) is amended to provide that if the defendant was convicted of a reportable conviction in federal court, the conviction will be treated as an out-of-state conviction regardless of where the offense occurred.

Access to social security numbers and other personal identifying information. G.S. 132-1.10(f1) has allowed a register of deeds and clerk of court to remove a person's social security and driver's license number from a website available to the general public. The statute is amended to allow the AOC as well as registers of deeds and clerks of court to remove a range of identifying and financial information, listed in G.S. 132.110(f), from publicly accessible official records. The amended subsection provides that law enforcement personnel, judicial officials, and parties to a case and their counsel are entitled to inspect, and copy the unredacted records.

Effective: July 21, 2017

**Session Law 2017- 160
House Bill 337**

Unmanned Aircraft

Effective December 1, 2017, the definition of model aircraft in G.S. 15A-300.1(a)(2) is repealed, and the definition of unmanned aircraft in G.S. 15A-300.1(a)(3) is revised to delete the reference to model aircraft.

G.S. 15A-300.1(d), restricting the use of infrared and other thermal imaging technology on commercial and private unmanned aircraft systems, is repealed. Subsection (c1) is added allowing emergency management agencies to use unmanned aircraft systems for all functions and activities related to emergency management.

Effective: July 21, 2017 unless otherwise noted

Session Law 2017-162 House Bill 384

Retail Theft

Amended G.S. 14-72.11(1), which makes it a Class H felony to take property worth more than \$200 by using an exit door in compliance with certain federal regulations, no longer requires a notice on the door about the offense and punishment. New subsection (5) makes it a Class H felony to exchange property for cash, a gift card, a merchandise card, or some other item of value knowing or having reasonable grounds to believe the property is stolen.

Amended G.S. 14-86.6(a) clarifies that a violation of either subdivision (1), which deals with conspiracy to commit retail theft, or subdivision (2), which deals with receiving or possessing stolen retail property, is a Class H felony. New G.S. 14-86.6(a1) creates two crimes, both Class G felonies. It is a violation of subdivision (1) of G.S. 14-86.6(a1) to conspire with another person to steal retail property from one or more retail establishments with a value exceeding \$20,000 aggregated over a 90-day period, with the intent to sell the property for gain, and take or cause the property to be placed in the control of a retail property fence or other person in exchange for consideration. It is a violation of subdivision (2) to conspire with two or more people as an organizer, supervisor, financier, leader, or manager to engage for profit in a scheme or course of conduct to effectuate the transfer or sale of property stolen from a merchant in violation of G.S. 14-86.6. New G.S. 14-86.6(c) states that thefts of retail property in more than one county may be aggregated in an alleged violation, and each county where a part of the charged offense occurs has concurrent venue under G.S. 15A-132.

The definitions in G.S. 66-387 regarding pawnbrokers and cash converters and the recordkeeping requirements in G.S. 66-392 have been amended.

Effective: December 1, 2017

Session Law 2017-176 Senate Bill 384

Miscellaneous Criminal Law Changes

Prior convictions for habitual felon prosecutions. G.S. 14-7.1(b) is amended to clarify and define felony convictions outside of North Carolina that may be used as prior felony convictions in a habitual felon prosecution. They are:

- An offense that is a felony under the laws of another state or sovereign that is substantially similar to a felony in North Carolina and for which a plea of guilty was entered or conviction returned regardless of the sentence actually imposed.
- An offense under the laws of another state or sovereign that does not classify any crimes as felonies if
 - the offense is substantially similar to an offense that is a felony in North Carolina,
 - the offense may be punished by imprisonment for more than a year in state prison, and
 - a plea of guilty was entered or a conviction returned regardless of the actual sentence imposed.
- An offense that is a felony under federal law other than a federal offense relating to the manufacture, possession, sale, and kindred offenses involving intoxicating liquors.

Eligibility for driving privileges by person convicted of habitual impaired driving. The sunset clause in Section 7 of S.L. 2009-369 (H 1185), as amended by Section 61.5 of S.L. 2014-115 (H 1133), which allows the Division of Motor Vehicles to conditionally restore the license of a person convicted of habitual impaired driving after 10 years from the completion of the person's sentence, is removed.

Habitual breaking and entering. G.S. 14-7.25, which defines breaking and entering for purposes of habitual breaking and entering prosecutions, is amended to include breaking or entering with intent to terrorize or injure an occupant of the building under G.S. 14-54(a1).

Fingerprinting. G.S. 15A-502 is amended to provide that if a person is charged with an offense for which fingerprints are required under that statute, the court before which the charge is pending shall order the defendant to submit to fingerprinting by the sheriff or other appropriate law enforcement officer at the earliest practicable opportunity. If the person fails to appear as ordered, the court may initiate criminal contempt proceedings.

Limitations on Citizen-Initiated Arrest Warrants . G.S. 15A-304 is amended by adding a new subsection (b)(1) which requires a judicial official, when considering issuance of an arrest warrant at a citizen's request, to issue a criminal summons instead of a warrant unless the official finds that the accused should be taken into custody. The new subsection lists circumstances for the judicial official to consider in determining whether the accused should be taken into custody.

New subsection (b)(2) is added to G.S. 15A-304(b)(2) providing that, for a judicial official to find probable cause for an arrest warrant based solely on information provided by a person who is not a law enforcement officer, the information must be provided by written affidavit. Further, if a finding of probable cause is based solely on a written affidavit of a person who is not a law enforcement officer, the judicial official must issue a criminal summons unless one of three circumstances exists: there is corroborating testimony by a law enforcement officer or at least one disinterested witness; the judicial official finds that additional investigation by law enforcement would be a substantial burden for the complainant; or the judicial official finds substantial evidence of one or more circumstances in G.S. 15A-304(b)(1) for taking the accused into custody.

Effective: December 1, 2017

**Session Law 2017-166
House Bill 469**

Regulation of Fully Autonomous Motor Vehicles

Article 18 is created in Chapter 20 (G.S. 20-400 to -403) regulating the operation of fully autonomous vehicles. A fully autonomous vehicle is defined as a motor vehicle that is equipped with an automated driving system that does not require an occupant of the vehicle to perform any portion of the operational or tactical control of the vehicle when the automated driving system is engaged.

Vehicle requirements. New G.S. 20-401(g) permits the operation of fully autonomous vehicles on North Carolina roadways if the vehicle meets all of the following requirements:

1. the vehicle complies with state and federal law and has been certified as being in compliance with federal motor vehicle safety standards;
2. if involved in a crash, the vehicle is capable of stopping at the scene, contacting the appropriate law enforcement agency to report the crash, calling for medical assistance, and remaining at the scene until authorized to leave;
3. the vehicle can achieve a “minimal risk condition;”
4. the vehicle is covered by a motor vehicle liability policy meeting statutory requirements; and
5. the vehicle is lawfully registered.

Rules of operation. New G.S. 20-401(a) states that the operator of a fully autonomous vehicle with the automated driving system engaged is not required to be licensed to drive. Subsection (d) of this new provision states that the person in whose name a fully autonomous vehicle is registered is responsible for any moving violations involving the vehicle. A person must be at least 12 years old to travel unsupervised in a fully autonomous vehicle. G.S. 20-401(c) makes it unlawful for the parent or legal guardian of a child under 12 to knowingly permit the child to occupy a fully autonomous vehicle that is in motion or that has the engine running unless the child is being supervised by a person who is at least 18 years old.

Preemption. Local governments are prohibited under new G.S. 20-401(f) from enacting laws regulating fully autonomous vehicles or vehicles that are equipped with an automated driving system. Local governments may, however, continue to regulate traffic as authorized in Chapter 153A and Chapter 160A of the General Statutes so long as the regulations apply to motor vehicles generally.

Fully Autonomous Vehicle Committee established. New G.S. 20-403 creates a Fully Autonomous Vehicle Committee within the North Carolina Department of Transportation (DOT) and specifies the categories of people who comprise the 17-member committee. The committee must meet at least four times a year to consider matters related to fully autonomous vehicle technology, review the application of state motor vehicle law to fully autonomous vehicles, and make recommendations about the testing of fully autonomous vehicles, for DOT rules and ordinances, and to the General Assembly on necessary changes to state law.

Effective: December 1, 2017

Session Law 2017-169 House Bill 716

Distance Between Commercial Motor Vehicles Traveling in a Platoon

G.S. 20-152 currently prohibits the driver of a motor vehicle from following another vehicle more closely than is reasonable and prudent and requires a driver traveling on a highway outside of a business or residential district to, when conditions permit, leave enough space between his or her vehicle and the vehicle ahead so as to allow an overtaking vehicle to enter and occupy the intervening space without danger. New subsection (c) provides that the aforementioned rules do not apply to the driver of any non-leading commercial motor vehicle traveling in a platoon on a roadway where the NC Department of Transportation (DOT) has authorized travel by platoon. The term “platoon” means a group of individual commercial motor vehicles traveling at close following distances in a unified manner through the use of an electronically interconnected braking system.

Effective: August 1, 2017

Session Law 2017-179
House Bill 128

Unmanned Aircraft Near Prison or Jail

New G.S. 15A-300.3(a) prohibits the use of an unmanned aircraft system within a horizontal distance of 500 feet, or vertical distance of 250 feet, from a local jail or state or federal prison. New G.S. 15A-300.3(b) includes several exceptions, such as written consent from the official in charge of facility, and law enforcement use in accordance with G.S. 15A-300.1(c). New G.S. 15A-300.3(c) establishes three punishment levels. Delivering or attempting to deliver a weapon to a prison or jail by an unmanned aircraft system within the prohibited distances, whether or not within an exception, is a Class H felony, with a mandatory fine of \$1,500. Similarly, delivering or attempting to deliver contraband, defined as controlled substances, cigarettes, alcohol, and communication devices, is a Class I felony, with a mandatory fine of \$1,000. Using an unmanned aircraft system in violation of G.S. 15A-300.3(a) and not within an exception is a Class 1 misdemeanor, with a mandatory fine of \$500. New G.S. 15A-300.3(d) contains provisions on seizure and forfeiture of illegally-used unmanned aircraft systems and attached property, weapons, and contraband.

Effective: December 1, 2017

Session Law 2017-182
House Bill 559

Hunting on Sunday

G.S. 103-2 is amended to expand hunting of wild animals, upland game birds, and migratory birds on Sunday, as follows:

- For landowners, members of a landowner's family, and others with written permission from a landowner, amended G.S. 103-2(a) allows hunting of wild animals and upland game birds with firearms on Sunday on the landowner's property subject to certain limitations. The act removes the previous prohibitions on hunting migratory birds on Sunday on the landowner's property; within 500 yards of a residence not owned by the landowner; and in a county with a population of more than 700,000 people.
- On State-managed public hunting lands, new G.S. 103-2(a1) allows people to hunt wild animals and upland game birds with firearms on Sunday except they may not hunt on Sunday between 9:30 a.m. and 12:30 p.m.; may not use a firearm to take deer that are run or chased by dogs; and may not hunt within 500 yards of a place of religious worship.
- New G.S. 103-2(a2) allows hunting of migratory birds on Sunday if authorized by the Wildlife Resources Commission but prohibits hunting on Sunday between 9:30 a.m. and 12:30 p.m. other than on licensed hunting preserves; within 500 yards of a place of religious worship; and before March 1, 2018.

Effective: July 25, 2017

G.S. 153A-129, which authorizes counties to adopt ordinances prohibiting Sunday hunting, is amended to provide that such an ordinance is not effective unless approved by a majority of those voting in a county-wide referendum.

Effective: October 1, 2017

Session Law 2017-188
Senate Bill 55

Civil Enforcement of Requirement That Vehicles Stop for Stopped School Bus

New G.S. 153A-246 is created allowing counties to adopt ordinances for the civil enforcement of G.S. 20-217—the statute that requires motor vehicles to stop for stopped school buses. A county may adopt an ordinance that permits civil enforcement of G.S. 20-217 by means of an automated school bus safety camera installed and operated on the school bus. Such an ordinance does not apply to any violation of G.S. 20-217 that results in injury or death.

Administrative procedure. New G.S. 153A-246(b) sets forth the procedures for civil enforcement. The county must issue a citation notifying the registered owner of the motor vehicle of the violation. The owner must receive the citation within 60 days of the violation. The citation must include an image taken from the automated school bus camera that shows the vehicle involved in the violation. It must also include an affirmation from a law enforcement officer that his or her inspection of the image reveals that the owner’s motor vehicle violated the ordinance. The county must institute a nonjudicial administrative hearing process for contested citations or penalties. A person may appeal an adverse administrative decision to district court.

Penalty. Violations of such an ordinance are noncriminal violations for which no insurance or driver’s license points may be assessed. The civil penalty for the first offense is \$400. The penalty for the second offense is \$750. Each subsequent ordinance violation is subject to a \$1,000 penalty. A person who fails to pay the civil penalty or request a hearing within 30 days after receiving the citation waives the right to contest responsibility and is subject to a late penalty of \$100 in addition to the assessed civil penalty.

Registration hold. Effective July 25, 2018, DMV must refuse to register any motor vehicle owned by a person who has failed to pay a civil penalty assessed under G.S. 153A-246. This provision applies to the registration of any motor vehicle whose owner’s failure to pay is reported by a county to DMV on or after July 25, 2017.

No civil enforcement in the case of criminal prosecution. If a person is charged in a criminal pleading with violating G.S. 20-217, the charging law enforcement officer must notify the county office responsible for processing civil citations. The county may not impose a civil penalty against the person arising out of the same facts as those for which the person is charged in a criminal pleading. G.S. 153A-246(e) states that the General Assembly “encourages criminal prosecution for violation of G.S. 20-217” when school bus camera photographs and video provide sufficient evidence to support such a prosecution. Amended G.S. 20-217(h) clarifies, however, that “failure to produce a photograph or video recorded by an automated school bus safety camera” does not preclude prosecution.

Images as evidence. New G.S. 115C-242.1(d) requires that any photographs or videos recorded by an automated school bus safety camera that capture a violation of G.S. 20-217 be provided to the investigating law enforcement agency for use as evidence in a criminal prosecution.

Effective: July 25, 2017

Session Law 2017-191
House Bill 84

DMV to Develop License Designation for Hearing Impaired Drivers

New G.S. 20-7(q2) requires DMV to develop a driver’s license designation that may be granted on request to a person who is deaf or hard of hearing. The designation must appear in the form of a unique symbol on the front of the person’s license. To obtain the designation, the person must provide verification or documentation substantiating his or her hearing loss. A person may also request that DMV

enter the driver's license symbol and a descriptor into the electronic record of any motor vehicle registered in the person's name.

The information collected under subsection (q2) is only available to law enforcement and only "for the purpose of ensuring mutually safe interactions between law enforcement and persons who are deaf or hard of hearing."

New G.S. 17C-6(a)(17) authorizes the NC Criminal Justice Education and Training Standards Commission to establish educational and training standards for officers concerning (1) recognizing and appropriately interacting with persons who are hearing impaired and (2) driver's license and vehicle registration identifiers for persons who are hearing impaired, including that those identifiers are optional.

Effective: January 1, 2018

**Session Law 2017-194
House Bill 138**

Classification of Criminal Gang Membership; Sentencing Enhancement and Increased Penalties

G.S. 14-50.16, which defined criminal street gang and criminal street gang activity, is repealed and replaced with G.S. 14-50.16A which contains new definitions of criminal gangs, criminal gang activity, criminal gang leader or organizer, and criminal gang member. To be considered a criminal gang leader or organizer, the person must meet at least two of the five listed criteria, such as recruiting other gang members and receiving a larger portion of the proceeds of criminal gang activity. To be considered a criminal gang member, the person must meet at least three of the nine listed criteria, such as admitting to membership, having tattoos associated with a criminal gang, and appearing in any form of social media to promote a criminal gang. In several criminal statutes, the terms criminal street gang and criminal street gang activity have been replaced with criminal gang and criminal gang activity. *See* G.S. 14-34.9 (discharging firearm within enclosure); G.S. 14-50.17 (encouraging person 16 or older to participate in gang); G.S. 14-50.18 (encouraging person under 16 to participate in gang); G.S. 14-50.19 (detering person from withdrawing from gang); G.S. 14-50.20 (retaliating against person for withdrawing from gang); G.S. 14-50.22 (enhanced offense for misdemeanor gang activity); G.S. 14-50.23 (forfeiture of property derived from gang activity); G.S. 14-50.25 (report of disposition of offense involving gang activity); G.S. 14-50.42 and G.S. 14-50.43 (real property used by gang for gang activity a public nuisance); G.S. 15A-1340.16 (aggravating factor); G.S. 15A-1343(b1)(9b) (special conditions of probation); and G.S. 15A-533(e)(3) (restrictions on pretrial release).

In addition to the definitional changes, the act makes the following substantive changes. New G.S. 15A-1340.16E provides that if an offense was committed as part of criminal gang activity, the person is sentenced one felony class higher than the principal felony for which the person was convicted. If the person is a criminal gang leader or organizer, the class is two classes higher than the principal felony. The sentence can be no higher than a Class C felony, and any sentence must run consecutively with and must commence at the expiration of any sentence then "being served." The enhancement does not apply to a gang offense in Article 13A of G.S. Ch. 14. The indictment or information for the felony must allege in that pleading the facts that qualify the offense for enhancement; one pleading is sufficient for all felonies tried at a single trial. The State must prove the facts beyond a reasonable doubt; the procedure for determining aggravating factors in G.S. 15A-1340.16(a1), (a2), and (a3) apply.

Revised G.S. 14-50.19 increases the punishment from a Class H to Class G felony for threatening a person with the intent to deter the person from assisting another to withdraw from a criminal gang; and it creates the offense of injuring a person with that intent, punishable as a Class F felony. Likewise, revised

G.S.14-50.20 increases the punishment from a Class H to Class G felony to threaten to injure a person or damage property of another in retaliation against a person for having withdrawn from a criminal gang; and it creates the offense of injuring a person for that purpose, a Class F felony. Amended G.S. 14-50.42, which makes real property used by a criminal gang for criminal gang activity a public nuisance, revises the requirements for showing that the owner or person in legal possession was or was not acting in good faith or engaging in innocent activities. Revised G.S. 15A-533(e), which establishes a rebuttable presumption against pretrial release, adds that imposition of an enhanced sentence under new G.S. 15A-1340.16E is one of the conditions triggering the presumption if all of the other conditions are present.

Effective: December 1, 2017

Session Law 2017-204
Senate Bill 628

Identity Theft in Submissions to Department of Revenue

New G.S. 105-263(a)(9b) makes it a Class G felony to knowingly obtain, possess, or use identifying information of another person, living or dead, with the intent to fraudulently utilize that information in a submission to the North Carolina Department of Revenue in order to obtain anything of value, benefit, or advantage. The offense is a Class F felony if the person whose identifying information is obtained, possessed, or used in this manner suffers any adverse financial impact as a proximate result of the crime. Each identity obtained, possessed, or used in this manner is a separate offense.

Effective: December 1, 2017

Session Law 2017-212
Senate Bill 582

HGN and DRE Testimony

This act amends S.L. 2017-57, the budget act, by making technical, clarifying and other changes to various laws including those effecting HGN and DRE testimony.

Section 17.8(b) of the act amends Rule 702 of the North Carolina Rules of Evidence, which regulates testimony by experts, to provide that a witness may give expert testimony on the issue of impairment and not on the issue of specific alcohol concentration relating to: (1) the results of a Horizontal Gaze Nystagmus (HGN) Test when the test is administered in accordance with the person's training by a person who has successfully completed HGN training; and (2) whether a person was under the influence of one or more impairing substances, and the category of such impairing substances, if the witness holds a current certification as a Drug Recognition Expert (DRE) issued by the State Department of Health and Human Services. The act deletes the requirement that the witness be qualified as an expert under Evidence Rule 702(a).

Effective: December 1, 2017