
FINAL LEGISLATIVE REPORT

2012

North Carolina Sheriffs' Association



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NORTH CAROLINA SHERIFFS' ASSOCIATION

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The 2012 Session of the North Carolina General Assembly convened at noon on Wednesday, May 16, 2012 with the House of Representatives adjourning at 11:00 a.m. on Tuesday, July 3, 2012 and the Senate adjourning at 3:05 p.m. that same day breaking with the tradition of adjournment at the same time.

During the two-year 2011-2012 Session of the General Assembly, 1,234 House bills and 961 Senate Bills were introduced, for a total of 2,195 legislative bills available for consideration. Of the 2,195 legislative bills introduced, 636 of them were enacted into law, which is 29%. Governor Beverly Perdue signed 425 bills, allowed 16 to become law without her signature, and vetoed 19 bills with 11 of the Governor's vetoes being overridden by the General Assembly. Some bills are enacted into law by the General Assembly and do not go to the Governor for signature, to include "local" bills (which are those that affect 14 or fewer counties) and bills authorizing our state's citizens to vote on an amendment to the North Carolina Constitution.

This Final Legislative Report of the North Carolina Sheriffs' Association summarizes bills of interest to Sheriffs, Sheriffs' Office personnel and other criminal justice professionals. Included in this Final Legislative Report are summaries of: (1) relevant provisions of the 2012 State Budget Bill; (2) relevant bills enacted into law this Session; and (3) important legislation not enacted into law.

For details about the legislative bills summarized below, please review the actual legislation. Copies of any of the legislation introduced or considered by this year's General Assembly are available on the General Assembly's world wide website: www.ncleg.net. You may also receive one copy of as many bills as you are interested in, free of charge, by calling the General Assembly's Printed Bills Office at 919-733-5648. They will need to know if it is a House Bill or Senate Bill and the bill number. (For example, Senate Bill 8.)

**STATE BUDGET BILL
HOUSE BILL 950**

House Bill 950 modifies the 2011 Appropriations Act which was a two year budget. The Governor vetoed the act, and the General Assembly overrode her veto. Unless otherwise noted, the changes are effective July 1, 2012. The following sections of the final state budget bill are of particular interest to the sheriffs of North Carolina and to the criminal justice community:

- G.S. 115D-21(c) is amended to authorize community colleges to increase the maximum permissible penalty for a parking violation from \$5 to \$25 and adds G.S. 115D-21(d) to provide that the clear proceeds of civil penalties collected under G.S. 115D-21 must be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
- Establishes the North Carolina Human Trafficking Commission in the Department of Justice 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 will consist of 12 members, 2 of which will be representatives of a Sheriff's Office. The Commission terminates December 31, 2014.
- G.S. 7A-314(f) is repealed. This law allowed appointment of foreign language interpreters at State expense. The budget bill states in Section 16.3 that the Judicial Department may use funds appropriated and available to the Judicial Department to provide assistance to limited english proficient (LEP) individuals, assist the courts in the fair, efficient, and accurate transaction of business, and provide more meaningful access to the courts.
- G.S. 7A-304(a) is amended to provide that the court may waive costs 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. This requirement applies for fees waived on or after July 1, 2012.
- Provides that the Community College tuition waiver provisions apply to law enforcement, fire, EMS or rescue and lifesaving entities serving a lake authority that was created by a county board of commissioners prior to July 1, 2012 and to the Eastern Band of Cherokee Indians law enforcement, fire, EMS or rescue and lifesaving tribal government departments or programs.
- Transfers \$5 million from the Statewide Misdemeanant Confinement Fund to the Division of Adult Correction for the Treatment for Effective Community Supervision Program (TECPS). This program provides treatment services to probationers in the community.

- Transfers the portion of the Young Offenders Forest Conservation Program (BRIDGE) that is currently funded by the Department of Public Safety to the Department of Agriculture and Consumer Services. BRIDGE program participants are young offenders from the Western Youth Institute who assist the North Carolina Forest Service with firefighting and other forest management efforts.
- Expands the Parole Commission to meet the increased caseloads resulting from the Justice Reinvestment Act. The Parole Commission will be responsible for reviewing an additional 14,000 post release supervision cases annually. Effective August 1, 2012, the bill provides funding to convert two part-time Parole Commissioners to full-time positions. Effective February 1, 2013, the bill provides funding to establish one additional full-time Parole Commissioner. The Department of Public Safety will expand the Parole Commission staff to meet the increased caseload resulting from the Justice Reinvestment Act.
- Closes Edgecombe Youth Development Center (YDC) and eliminates 57 full-time equivalent positions, effective January 1, 2013. The Department is authorized to transfer five youth counselor associate positions to Chatham YDC and five youth counselor associate positions to Lenoir YDC to increase the operating capacities at those facilities from 28 beds each to 32 beds each.
- The Division of Adult Correction will be allowed to establish more than two release dates per month for inmates leaving prison.
- Transfers the Geodetic Survey Section from the Department of Environment and Natural Resources to the Department of Public Safety. Geodetic Survey will be housed in the Division of Law Enforcement, Emergency Management Section.
- Restores the recurring appropriation to the Administrative Office of the Courts (AOC) for the Family Court Program.
- The AOC has been directed to study the management of magistrate schedules throughout the court system and to make recommendations for more efficient use of magistrates in each county and to ensure each county has sufficient coverage to adequately respond to law enforcement and to the public.
- Sets aside a \$10 million reserve to continue building the Voice Interoperability Plan for Emergency Response (VIPER) system.
- The Court Information Technology Fund (also referred to as the “telephone fee”) was modified to allow monies collected to be used for renovation at the Supreme Court building, Court of Appeals building, and the Judicial Center where the Administrative Office of the Courts is located.
- Reduces the pass-through appropriation to the Conference of District Attorneys by \$200,000. The Conference of District Attorneys has been awarded \$6.69 million in the

Mortgage Settlement Agreement. These funds are to be used for grants and training for prosecutorial offices throughout the State. A portion of the funds can be used for administration at the Conference.

HOUSE BILLS

HOUSE BILL 54, Habitual Misdemeanor Larceny, amends G.S. § 14-72 to make a larceny a Class H felony regardless of the value of the property if the larceny is committed after a defendant has been convicted at least four times of misdemeanor or felony larceny in North Carolina or any other jurisdiction. To be counted, the prior conviction must be one in which the person was represented by an attorney or waived the right to an attorney.
Effective: December 1, 2012

HOUSE BILL 149, Terrorism/State Offense, adds a new section G.S. § 14-10.1 which creates a new State crime of terrorism. A person is guilty of terrorism if the person:

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

An “act of violence” is defined to include the following crimes:

- Murder under G.S. § 14-17;
- Voluntary and Involuntary Manslaughter under G.S. § 14-18;
- any felony offense in Chapter 14 of the General Statutes that includes an assault, or use of violence or force against a person;
- any felony offense that includes either the threat or use of any explosive or incendiary device; or
- any offense that includes the threat or use of a nuclear, biological, or chemical weapon of mass destruction.

The offense of terrorism is a separate offense from the "act of violence" offense and is punishable one class higher than the act of violence offense, except when the "act of violence" offense is a Class A or B1 felony, the punishment for terrorism is as a B1 felony. In addition, 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).

This act also amends G.S. § 14-7.20 to make the offense of engaging in a continuing criminal enterprise a Class D felony if the underlying felony is a violation of the new terrorism law, G.S. § 14-10.1. The forfeiture provisions also apply to a continuing criminal enterprise of terrorism.
Effective: December 1, 2012

HOUSE BILL 153, No Public Retirement for Convicted Felons, amends the North Carolina retirement statutes, including the Supplemental Retirement Income Plans for State and Local

Law Enforcement Officers, to prohibit payment of retirement benefits to any person who is convicted of any felony under federal law or the laws of this State if all of the following apply:

- (1) The offense is committed while the person is in service; and
- (2) The conduct resulting in the person's conviction is directly related to the person's office or employment.

[Note: If the sentencing court finds the aggravating factor under G.S. § 15A-1340.16(d)(9) or other applicable state or federal procedure that the person's conduct is directly related to the person's office or employment, then condition (2) has been met.]

The law provides for return of the person's retirement contributions with interest but no payment of retirement benefits. If a person whose benefits under the retirement system were forfeited subsequently receives an unconditional pardon of innocence or the conviction is vacated or set aside for any reason, then the person may seek a reversal of the benefit forfeiture by presenting sufficient evidence to the State Treasurer.

The aggravating factor for felony sentencing, G.S. § 15A-1340.16(d)(9), is amended to read:

- (9) The defendant 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.

If a public employee or official is employed but has not vested in the applicable retirement system on December 1, 2012, and is convicted of a felony for conduct related to the person's office or employment and the felonious acts were committed after December 1, 2012, then that person shall forfeit all benefits under the retirement system, except for a return of person's contributions plus interest.

If an employee or official is employed and has vested in the retirement system on December 1, 2012, and is convicted of a felony and the conduct is related to the person's office or employment and the felonious acts were committed after December 1, 2012, then that person is not entitled to any creditable service that accrued after December 1, 2012.

Effective: December 1, 2012

HOUSE BILL 176, Review Domestic Violence Program Participation, amends the regular conditions of probation, G.S. § 15A-1343(b)(12), to provide that if a defendant is ordered as a condition of probation to attend a domestic violence abuser treatment program, the defendant must comply with the rules of the program. The failure to abide by the rules of the program will be reported to the defendant's probation officer who will report back to the court. If the defendant is not placed on supervised probation but is required to complete an abuser treatment program, the court must schedule a compliance review hearing within sixty (60) days of judgment and every sixty (60) days thereafter until the defendant completes the abuser treatment program.

G.S. § 15A-1382.1(a) is amended to require the court to make a determination of the personal relationship between the defendant and the victim for any act that would be domestic violence under the definition in G.S. § 50B-1. The clerk of court must then enter this determination in the court record. Prior to this amendment, the requirements of G.S. § 15A-1382.1(a) did not cover all crimes that fell within the definition of domestic violence in G.S. § 50B-1. This bill makes them the same.

Effective: December 1, 2012

HOUSE BILL 199, Metal Theft Prevention Act of 2012, moves the pawnbrokers and cash converter statutes from Chapter 91A to Chapter 66 and includes them in a new Article 45, Parts 1 and 2. The bill then adds a new Part 3 to Article 45 of Chapter 66 of the General Statutes which regulates sales and purchases of metal.

This Part 3 requires a person who purchases both ferrous and nonferrous metals (other than precious metals which are regulated by Part 2) to obtain a permit from the sheriff authorizing the person to engage in the business of a secondary metals recycler and to maintain records of purchases that are available for inspection by all law enforcement officers. The Attorney General is to develop an application form and a permit form and the Sheriff may not charge a fee. A permit is valid for 12 months and shall be valid only for fixed sites in the county of issuance and a permit must be obtained for each fixed site. The new law does not apply to:

- (1) Purchases of regulated metals property from a manufacturing, industrial, government, or other commercial vendor that generates or sells regulated metals property in the ordinary course of its business; and
- (2) Purchases of regulated metals property that involve only beverage containers, except that the hold orders and requirements listed below do apply.

Nonferrous metals are metals not containing significant quantities of iron or steel, including, but not limited to, copper wire, copper clad steel wire, copper pipe, copper bars, copper sheeting, aluminum other than aluminum cans, a product that is a mixture of aluminum and copper, catalytic converters, lead-acid batteries, and stainless steel beer kegs or containers, but not precious metals, G.S. § 66-415(4). The purchaser must obtain identifying information, including a photocopy of an unexpired form of government identification from the seller. If the item is a catalytic converter that is not attached to a vehicle or is a central air conditioner evaporator coil or condenser, the index fingerprint of the seller must also be obtained. These records must be made available to law enforcement officers and law enforcement officers may require the purchaser to send electronic copies to them. The records must be retained by the purchaser for two years.

A law enforcement officer who has reasonable suspicion that an item has been stolen may issue a written hold notice to a purchaser which requires the purchaser to hold the item for 15 days. This hold notice can be extended for an additional 30 days. In addition, any secondary metals recycler owner convicted of a felonious violation of this new Article 45 or G.S. § 14-71 (receiving stolen goods), § 14-71.1 (possession of stolen goods), or § 14-72 (larceny) is required to hold and retain all nonferrous metals for seven (7) days from the date of purchase before

selling, dismantling, crushing, defacing, or in any manner altering or disposing of the regulated metals property.

A secondary metals recycler may not:

- (1) operate any business that cashes checks at a fixed site at which the secondary metals recycler purchases regulated metals property;
- (2) purchase nonferrous metals for the purpose of recycling the nonferrous metals, unless the nonferrous metals purchaser possesses a valid permit;
- (3) purchase any central air conditioner evaporator coils or condensers, or catalytic converters that are not attached to a vehicle, except that a secondary metals recycler may purchase these items from a company, contractor, or individual that is in the business of installing, replacing, maintaining, or removing these items; or
- (4) purchase any regulated metals property that the secondary metals recycler knows or reasonably should know to be stolen. G.S. § 66-419(a).

The new law also makes it a crime for a person to transport or possess on highways of this State an amount of copper weighing in the aggregate more than 25 pounds, unless at least one of the following is true:

- (1) The vehicle is used in the ordinary course of business for the purpose of transporting nonferrous metals. This term includes vehicles used by gas, electric, communications, water, plumbing, electrical, and climate conditioning service providers, and their employees, agents, and contractors, in the course of providing these services;
- (2) The person transporting or possessing the copper possesses, and presents when requested, a valid bill of sale for the copper; or
- (3) A law enforcement officer determines that the copper is not stolen and is in the rightful possession of the person. G.S. § 66-419(b).

The new law also lists items that may not be purchased, including metal with a business name on it; street signs; traffic lights; beer kegs; historical markers and other metals that obviously should belong to a business or government. See G.S. § 66-419(c).

Purchases of metal for cash are limited to one hundred dollars (\$100.00) per transaction. Any purchase in excess of this amount must be by check or money order. A purchaser shall not make more than one cash purchase per day from any individual, business, corporation or partnership.

A violation of this new law is a Class 1 misdemeanor for the first offense and a Class I felony for a second or subsequent offense. G.S. § 66-11.2(a), which allows for forfeiture of vehicles that

are used to violate the regulated metals law, is recodified as G.S. § 66-426 and applies to violations of the new law.

A new G.S. § 14-159.4, was enacted that makes it a crime to cut, mutilate, deface, or otherwise injure property to obtain nonferrous metals. If the direct injury is to property, and the amount of loss in value to the property, the amount of repairs necessary to return the property to its condition before the act, or the property loss (including fixtures or improvements) is less than one thousand dollars (\$1,000), a violation is a Class 1 misdemeanor. If the applicable amount is one thousand dollars (\$1,000) or more, but less than ten thousand dollars (\$10,000), a violation is a Class H felony. If the applicable amount is ten thousand dollars (\$10,000) or more, a violation shall be deemed an aggravated offense and is a Class F felony. If as a result of the crime a person suffers serious injury, it is a Class A1 misdemeanor. If the injury is serious bodily injury, punishment is a Class F felony. When a person is killed, the punishment is a Class D felony. If communications or electrical services are disrupted or ten (10) or more people suffer loss of communication or electrical service, the punishment is a Class 1 misdemeanor. In addition, the property owner is not civilly liable to a person who is injured while committing or attempting to commit a violation of this new law. **This bill was supported by the North Carolina Sheriffs' Association.**

Effective: October 1, 2012

HOUSE BILL 203, Mortgage Satisfaction Forms/No False Liens. Effective December 1, 2012, a new G.S. § 14-118.6 is added to make it a Class I felony for any person "to present 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 public officer or public 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." In addition to any criminal penalties provided for in this section, a violation of this section shall constitute an unfair and deceptive trade practice under G.S. § 75-1.1.

Effective December 1, 2012, the law also amends G.S. § 14-118.12 (residential mortgage fraud) to make it a crime to knowingly file in a public record 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 register of deeds can refuse to file a lien or encumbrance if there is reasonable suspicion that the lien or encumbrance is false. The punishment for filing a false security agreement, G.S. § 14-401.19, is raised from a Class 2 misdemeanor to a Class I felony. Filing or attempting to file a false claim of lien on real property is raised from a Class 1 misdemeanor to a Class I felony. **This bill was supported by the North Carolina Sheriffs' Association.**

Effective: October 1, 2012

HOUSE BILL 235, Amend Grounds/Termination of Parental Rights, modifies G.S. § 7B-1111(a) to add as a ground for terminating a parent's rights to a child, a conviction of the parent of a sexually-related offense under Chapter 14 resulting in the conception of the child.

Effective: October 1, 2012

HOUSE BILL 261, Intrastate Motor Carrier Markings, amends G.S. § 20-101 to require the name of the owner, the motor carrier's identification number preceded by the letters "USDOT" and followed by the letters "NC," printed on each side of the vehicle in letters not less than three (3) inches in height on all vehicles that have a gross vehicle weight rating of more than 26,000 pounds (previously more than 10,000 pounds). This new law does not apply to any vehicle exempt under federal regulation 49 C.F.R. 390.3(f). The exempt vehicles include school buses, government vehicles, and fire and rescue vehicles. During the period from December 1, 2012, to November 30, 2013, an operator of a motor vehicle who violates this Act shall be given a warning of violation only.

Effective: December 1, 2012

HOUSE BILL 328, Wayne Sheriff Vacancies, amends G.S. § 162-5.1 to add Wayne County to the list of counties which require that a vacancy in the Office of Sheriff is to be filled by a person recommended by the Executive Committee of the political party to which the previous sheriff belonged.

Effective: June 12, 2012

HOUSE BILL 340, Utilities Commission/Criminal Records Check, adds a new G.S. § 62-273.1 that requires a State and federal criminal history check for any person or company who holds or seeks a certificate authorizing the person or company to transport household goods within North Carolina. An applicant for or current holder of a certificate to transport household goods must furnish the North Carolina Utilities Commission ("Commission") with a complete set of the applicant's fingerprints in a manner prescribed by the Commission. The term "applicant" includes an individual, a partnership, a limited liability corporation and a corporation. The law does not indicate who within a corporation must submit fingerprints but Commission rules require all partners and principals of companies to do so.

The law does not require a law enforcement agency to assist the applicant. The North Carolina Department of Justice is authorized to run these criminal history checks and to send the results to the Chief Clerk of the Commission. The new G.S. § 62-273.1 also provides that if the criminal history check reveals a criminal conviction, the Commission may deny an application for a certificate or revoke the certificate of a person or company. The new statute lists factors such as the seriousness of the offense, date of the crime, age of the offender, whether the crime relates to duties of transporting household goods, employment history and evidence of rehabilitation for the Commission to consider in determining what action to take.

Effective: June 7, 2012

HOUSE BILL 345, Modify Move Over Law, amends the definition of "public service vehicle" in G.S. § 20-157(f) to add a vehicle being used to "install, maintain, or restore utility, including electric, cable, telephone, communications, and gas, or is a highway maintenance vehicle owned and operated by or contracted by the State or a local government." If this vehicle is operating an amber-colored flashing light authorized by G.S. § 20-130.2 and parked or standing within twelve feet of a roadway, drivers must move over or slow their vehicles.

Effective: October 1, 2012

HOUSE BILL 493, Landlord Tenant Law Changes, modifies G.S. § 42-34.1 to provide that if a judgment is rendered against a defendant for rent, the defendant can stay the execution of the judgment by posting a bond. If the defendant fails to pay rent within 5 days of its due date the plaintiff can request the clerk to immediately issue a writ of possession and the sheriff must dispossess the defendant in accordance with G.S. § 42-36.2.

This legislation was originally introduced and amended last year **at the request of the North Carolina Sheriffs' Association** to remove the provisions that would have allowed for private process servers in summary ejection cases.

Effective: October 1, 2012

HOUSE BILL 494, Continuous Alcohol Monitoring Law Changes, allows a judge to impose continuous alcohol monitoring ("CAM") of a type approved by the Department of Public Safety as a condition of pretrial release. Also a judge can order CAM as a condition of probation when alcohol dependency or chronic abuse has been identified by a substance abuse assessment. The law changed the requirement for the CAM fee to be paid to the clerk of superior court. The fee is to be paid directly to the provider but the provider cannot terminate a CAM user for non-payment without approval of the court. In addition, if the person is convicted of driving while license is revoked and the revocation was for an impaired driving offense, the court can order CAM as a condition of probation. For a person convicted of driving while impaired ("DWI"), the court may reduce Level 1 jail time from 30 days to 10 days and require the defendant to use CAM for at least 120 days. A judge may order a defendant convicted of DWI and punished at Level 2 punishment to use CAM for 90 days in place of the mandatory seven (7) days of jail time. Also, for any punishment level upon conviction of DWI, the judge is authorized to impose CAM. Finally, in child custody cases, the court may order CAM when a parent is ordered to abstain from consumption of alcohol.

Effective: December 1, 2012

HOUSE BILL 512, Rendering Act Amendments. In addition to regulatory changes to the rendering business, this legislation adds a new G.S. § 14-79.2 to create the following three new offenses. It is unlawful to:

- Take and carry away a waste kitchen grease container or the waste kitchen grease contained therein which bears a notice that unauthorized removal is prohibited without the written consent of the owner of the container.
- Intentionally contaminate or purposely damage any waste kitchen grease container or grease therein.
- Place a label on a waste kitchen grease container knowing that it is owned by another person in order to claim ownership of the container.

It is presumed that the name of the person on the grease container is the owner of the grease in the container. If the value of the grease or the container is one thousand dollars (\$1000) or less, the offense is a Class 1 misdemeanor. If the value is more than one thousand dollars (\$1000), the offense is a Class H felony.

Effective: January 1, 2013

HOUSE BILL 585, Vehicle Emissions Inspections, amends G.S. § 20-183.2(b)(3) to require inspection of a motor vehicle if it is:

- (i) a 1996 or later model and older than the three most recent model years; or
- (ii) a 1996 or later model and has 70,000 miles or more on its odometer.

For this law to come into effect, the United States Environmental Protection Agency must approve this change to North Carolina's Clean Air Act implementation plan and the Division of Motor Vehicles must implement a newer version of the Motor Vehicle Inspection and Law Enforcement System. This law will not change the vehicle safety inspection requirements. A safety inspection will be required even if an emissions inspection is not.

This legislation was amended to remove a provision from a previous version of the bill which would have allowed the Chief Operating Officer of the Department of Public Safety to hold a supervisory position over the North Carolina State Highway Patrol.

Effective: January 1, 2014

HOUSE BILL 660, No In Person Service Required/50C Orders, allows for service of 50C civil no contact orders, according to Rule 4(j) of the Rules of Civil Procedure, if the respondent was not present in court when the order was issued. The sheriff of the county where the service is to be made is the proper person to serve the order. The order can also be served by registered or certified mail, return receipt requested, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with a delivery receipt, or signature confirmed delivery by the United States Postal Service.

Effective: June 11, 2012

HOUSE BILL 673, Street Gang Nuisance Abatement, repeals the current street gang nuisance statute, G.S. § 14-50.24, and replaces it with a new Article 13B of Chapter 14 of the General Statutes called the "North Carolina Street Gang Nuisance Abatement Act." G.S. § 14-50.32 declares any real property erected, established, maintained, owned, leased or used by a street gang for street gang activity as defined by G.S. § 14-50.16(c) a public nuisance. G.S. § 14-50.16(c) defines street gang activity to include committing criminal offenses under Chapter 90 or Chapter 14. A nuisance abatement action may be filed under Chapter 19 of the General Statutes with all the remedies in that law including that the real property may be forfeited. However, an owner who does not have actual knowledge that the real property is being used for criminal street gang activity or the owner is being coerced into allowing the property to be used for criminal street gang activity can be found by the court to be an innocent owner and forfeiture of the property denied.

Also, a street gang, as defined in G.S. § 14-50.16(b), that regularly engages in criminal street gang activities, as defined in G.S. § 14-50.16(c), constitutes a public nuisance. For the purposes of this section, the term "regularly" means at least five times in a period of not more than 12 months. Any person who regularly associates with others to engage in criminal street gang

activity may be made a defendant in a nuisance lawsuit, brought pursuant to Chapter 19 of the General Statutes, to abate any public nuisance resulting from criminal street gang activity. If the court finds that a public nuisance exists, the court may enter an order enjoining the defendant in the lawsuit from engaging in criminal street gang activities and impose other reasonable requirements to prevent the defendant or a gang from engaging in future criminal street gang activities. Any such order expires one year after entry. **This bill was supported by the North Carolina Sheriffs' Association.**

Effective: October 1, 2012

HOUSE BILL 741, Law Enforcement/Emergency Vehicle Length, amends G.S. § 20-116(d) to add a new subdivision that allows a single vehicle that is owned or leased by a state, local or federal government agency that is being used for law enforcement or emergency management purposes to "not exceed 45 feet in length overall, excluding bumpers and mirrors." Previously, the law limited these vehicles to 40 feet. A change was required because some vehicles used as command posts exceed the 40 feet limitation.

Effective: June 20, 2012

HOUSE BILL 778, Amend Innocence Commission Laws, amends the statutes relating to the North Carolina Innocence Inquiry Commission ("Innocence Commission" or "Commission"). A definition of "claimant" is added to G.S. § 15A-1460 to be "a person asserting that he or she is completely innocent of any criminal responsibility for a felony crime upon which the person was convicted and for any other reduced level of criminal responsibility relating to the crime."

The statute previously allowed any person to refer a claim of innocence to the Innocence Commission. It was changed to permit referrals to the Commission only by "any court, state or local agency, a claimant, or a claimant's counsel," G.S. § 15A-1467(a). The new law allows crime victims, upon ten (10) days notice to the Commission, to attend any closed sessions. The authority of the Commission to exclude a victim "if the Commission determines that the victim's presence may interfere with the investigation" was repealed.

The new law amends G.S. § 15A-268 (preservation of biological evidence) to require the agency that has custody of physical evidence (referred to as the custodial agency) to preserve the evidence, "regardless of the date of collection," for as long as required by the preservation statutes. The new law amends G.S. § 15A-268(a7) and clarifies that the custodial agency, if requested, must provide the defendant with an inventory of biological evidence "in the agency's custody" or, if the evidence was destroyed based on a court order or other written directive, to provide the defendant a copy of the order or directive.

A new G.S. § 15A-1471 is enacted and reads that upon receiving written notice from the Innocence Commission of a Commission inquiry, the agency that has custody of evidence must "preserve all files and evidence subject to disclosure under G.S. 15A-903." The Innocence Commission is entitled to a copy of all records, including access to inspect and examine all physical evidence. Upon request of the Innocence Commission, the custodial agency "shall transfer custody of physical evidence to the Commission's Director, or the Director's designee, for forensic and DNA testing." At or prior to the completion of the Commission's inquiry, the Commission shall return all remaining evidence. The Innocence Commission is required to

maintain a chain of custody and comply with FBI and other federal requirements and to upload DNA results to CODIS. Once the Innocence Commission provides written notice that the Commission's inquiry is complete, the custodial agency's duty to preserve evidence under this new section ceases but the other sections of G.S. §15A-268(b) for preserving or disposing of evidence still apply.

G.S. §15A-1479 is revised to authorize the Commission Chair to request the Attorney General (previously this request was by 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 (previously read "allegation or evidence") of prosecutorial misconduct. The law precludes from 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), which is the law which provides for compensating people who have been convicted of a felony, imprisoned and who thereafter have had their cases dismissed through Innocence Commission proceedings. The law will now only allow compensation of people who pled not guilty or no contest to the charges. The new law did not add this limitation on the type of plea to G.S. § 148-82(a), which provides for compensation for people who have been convicted of a felony and been imprisoned and who have received a pardon of innocence from the Governor. A person who receives a pardon of innocence from the Governor can receive compensation regardless of their plea to the charges.

This bill was supported by the North Carolina Sheriffs' Association.

Effective: June 7, 2012

HOUSE BILL 843, Modernize NC Emergency Management Act, rewrites the emergency management authority in preparing for and dealing with natural or man-made emergencies or disasters. The majority of the law is merely a clarification of existing law. The new G.S. § 14-288.20A makes it a Class 2 misdemeanor to: (1) violate any provision of a State declaration of an emergency or executive order, (2) violate a provision of a locally declared state of emergency (previously violation of a local emergency ordinance was a Class 3 misdemeanor), or (3) to refuse to leave a public building during a state of emergency when ordered by the Governor. One other change is the repeal of G.S. § 14-288.7 (transporting dangerous weapon or substance during an emergency) which applied to all firearms. The new statute allows a city or county to enact an emergency ordinance to prohibit possession of dangerous substances during the emergency but the ordinance may not apply to lawfully possessed firearms and ammunition. G.S. § 166A-19.31.

A new G.S. § 166A-19.62 allows for the cost of a rescue of a person to be obtained from the rescued person if the rescued person:

- (1) willfully ignores a warning in an emergency and either (i) engages in an activity or course of action that a reasonable person would not pursue or (ii) fails to take a course of action that a reasonable person would pursue,
- (2) as a result of ignoring the warning, the person places himself or herself or another in danger, and
- (3) a governmental rescue effort is undertaken on the endangered person's behalf.

Effective: October 1, 2012

HOUSE BILL 853, End Ct. Orders/Est. Local Intake Procedures, amends G. S. § 153A-221.1 by transferring authority for establishing standards for a local government operated juvenile detention facility to the Chief Deputy Secretary of Juvenile Justice of the Department of Public Safety. Prior to this law, the standards were established by the Department of Health and Human Services and the Social Service Commission. The Chief Deputy Secretary of Juvenile Justice of the Department of Public Safety must work with the Secretary of Health and Human Services to develop standards allowing a local jail to be used as a holdover facility for a juvenile waiting for placement in a juvenile detention home.

Effective, January 1, 2013, the local juvenile detention facility must meet Department of Public Safety standards.

Effective October 1, 2012, the bill amends G.S. § 7B-1903(b)(7) and (8), to modify two circumstances under which the court may order secure custody of a juvenile. In order to conform to federal guidelines, the amendment removes the provision that allows holding a juvenile for up to 72 hours.

Effective: October 1, 2012

HOUSE BILL 941, Pseudoephedrine Amount Clarifications, 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). Also, **at the request of the North Carolina Sheriffs' Association**, G.S. § 90-113.52(c) is amended to require every retail purchaser of a pseudoephedrine product to furnish a valid, unexpired, government-issued photo identification (previously, only a photo identification was required) and to provide, in writing or orally, a valid personal residential address. The new law abolishes the requirement that the retailer provide the purchaser with written notice of the limits on pseudoephedrine purchases.

Effective: June 20, 2012

HOUSE BILL 989, Permanent License Plates, amends G.S. § 20-84 to clarify and limit the use of permanent license plates. The following entities will no longer be entitled to permanent license tags for their motor vehicles:

1. orphanages;
2. Radio Emergency Association of Citizen Teams - REACTS;
3. vehicles owned by persons and used exclusively for disaster relief;
4. buses owned by a church and used to transport persons to church events;
5. mobile x-ray unit owned by the North Carolina Tuberculosis Association, Incorporated;
6. sheltered workshop vehicles;
7. non-profits who provide transportation or operate programs approved by the Commission for Mental Health and Human Services;
8. a bus or trackless trolley owned by a city and operated under a franchise authorizing the use of city streets;

9. a trailer owned by a nationally chartered charitable organization and used exclusively for parade floats and for transporting vehicles and structures used only in parades; and
10. a telephone membership corporation.

Permanent tags will be limited to motor vehicles owned by:

1. the State or one of its agencies;
2. a county, city or town;
3. a board of education;
4. the civil air patrol;
5. an incorporated emergency rescue squad;
6. a local chapter of the American National Red Cross and used for emergency or disaster work; and
7. a motor vehicle owned by a community college.

All entities who receive a permanent registration plate must ensure that the permanent registration plates are registered under a single name. Also, the Division of Motor Vehicles can revoke a permanent tag if the vehicle is 90 days or more past due for a vehicle inspection.

All permanent plates issued to non-State entities will be cancelled and a new designed permanent plate will be issued by DMV to non-State entities on or before January 1, 2013. The yellow permanent tag for a State owned motor vehicle is not changed.

Effective: July 12, 2012

HOUSE BILL 1021, Justice Reinvestment Clarifications, clarifies certain provisions of the Justice Reinvestment Act (JRA) including:

- (1) for a probationer to be confined for a “quick dip” in jail, a waiver of rights must be signed by the probationer and two witnesses, the probation officer and another officer designated by the Chief of the Community Corrections Section (As originally written, the waiver had to be witnessed by the probation officer and “a supervisor.”);
- (2) the court may impose a 90-day period of confinement (“dunk”) for a defendant on probation who violates a condition of probation (other than committing another crime or absconding). The law originally stated that if the time remaining on the sentence is less than 90 days, then the "dunk" must be for the remainder of the sentence. The clarification of this provision is that for a felony conviction, if the time remaining on the sentence is less than 90 days, then the "dunk" must be for the remainder of the sentence. However, for a misdemeanor, the court may impose a period of confinement of up to 90 days but the period of confinement is not required to be for the remainder of a defendant’s sentence if the sentence is less than 90 days. The defendant may still only receive two periods of confinement;

- (3) the court may impose a fee associated with supervision of the probationer's performance of community service ordered as a "community and intermediate" condition of probation;
- (4) reimprisonment for a person on post-release supervision tolls the running of the period of supervised release, except that a supervisee shall not be re-released on post-release supervision if the supervisee has served all the time remaining on the supervisee's maximum imposed term.

Effective for crimes committed on or after December 1, 2012, the bill clarifies that drug trafficking crimes receive post-release supervision under G.S. 15A-1368.1 and increases the maximum sentences for drug trafficking offenses under G.S. § 90-95(h) by nine (9) months for Class F, G, and H offenses and by three (3) months for Class C, D, and E offenses to allow sufficient imprisonment time to account for the person's release onto post release supervision. Effective December 1, 2012, hearings related to post-release supervision and parole may be conducted by video conferencing.

Effective: July 16, 2012

HOUSE RESOLUTION 1022, Honor Rick Rhyne. The House of Representatives adopted a House Resolution honoring the life and sacrifice of Moore County Sheriff's Deputy Rick Rhyne, who was killed in the line of duty on December 8, 2011. Deputy Rhyne had served the citizens of the State of North Carolina as a law enforcement officer for over 37 years.

Adopted: June 20, 2012

HOUSE BILL 1023, Expunction/Nonviolent Offenses, adds a new G.S. § 15A-145.5 which provides for expunction of certain felonies and misdemeanors after 15 years if the person has had no other conviction in any jurisdiction for a felony or misdemeanor other than traffic violations. This new law is similar to G.S. § 15A-145.4 which was passed last session for expunction of convictions of minors and amends this previous statute to make it consistent with this new law. The new law applies to all misdemeanors and felonies except the following:

- (1) A Class A through G felony or a Class A1 misdemeanor.
- (2) An offense that includes assault as an essential element of the offense.
- (3) An offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.
- (4) Any of the following sex-related or stalking offenses: G.S. 14-27.7A(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.
- (5) Any felony offense in Chapter 90 of the General Statutes where the offense involves methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine.
- (6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for

which punishment was determined pursuant to G.S. 14-3(c).

(7) An offense under G.S. 14-401.16.

(8) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.

If the person is convicted of more than one felony or misdemeanor, not excluded above, in the same session of court, then those multiple felonies and misdemeanors are treated as one conviction. The requirements for filing a petition for expunction, which includes an application form authorizing a state and national criminal history records check to verify that the person has no other convictions, is the same as G.S. § 15A-145.4.

If the court, after a hearing, finds that:

(1) the petitioner has not previously been granted an expunction under sections, G.S. § 15A-145, G.S. § 15A-145.1, G.S. § 15A-145.2, G.S. § 15A-145.3, or G.S. § 15A-145.4;

(2) the petitioner has remained of good moral character;

(3) the petitioner has no outstanding warrants or pending criminal cases;

(4) the petitioner has no other felony or misdemeanor convictions other than a traffic violation;

(5) the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner; and

(6) the petitioner was convicted of an offense eligible for expunction under this section and was convicted of, and completed any sentence received for, the misdemeanor or felony at least 15 years prior to the filing of the petition,

the court may order that such person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information.

The law specifically includes that an expunction order does not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank or to fingerprint records.

At the request of the North Carolina Sheriffs' Association, strict guidelines and safeguards were placed in the legislation to prevent any person from receiving more than one expungement under the statute. **This bill was supported by the North Carolina Sheriffs' Association.**

Effective: December 1, 2012

HOUSE BILL 1059, Asheboro Towing, allows towing of motor vehicles from the city owned parking lot that is utilized as part of the downtown farmers market facility when requested by a

law enforcement officer employed by the City of Asheboro. This law applies only to the City of Asheboro.

Effective: June 28, 2012

HOUSE BILL 1108, Butner Public Safety Authority Change, amends G.S. § 122C-408(a) to require that the Butner Public Safety Authority (“Authority”) provide fire and police protection for the Town of Butner. Previously the Authority was limited to providing fire and police services for the Camp Butner Reservation.

Effective: June 21, 2012

HOUSE BILL 1173, Absconding Prob. Violators Forfeit Benefits, adds a new G.S. § 15A-1345(a1) which allows the court to suspend any government benefits a probationer is receiving when the court has issued an order for arrest for a violation of the conditions of probation and the probationer is absconding or otherwise willfully avoiding arrest. Government benefits include unemployment benefits, Medicaid or other medical assistance benefits, Work First Family Assistance, food and nutrition benefits, any other programs of public assistance under Article 2 of Chapter 108A of the General Statutes, and any other financial assistance of any kind being paid to the probationer from State or federal funds. The suspension of benefits will cease when the probationer is arrested.

Effective: October 1, 2012

HOUSE BILL 1205, Amend Trespass/Granville County, amends G.S. § 14-159.6(a) to make it a crime to trespass on property posted no hunting and/or fishing pursuant to G.S. § 14-159.7, even if there is no proof the trespasser intended to “hunt, fish or trap.” This law applies only to Granville County.

Effective: October 1, 2012

HOUSE BILL 1234, 2012 Appointments Bill, made appointments by the Speaker of the House and President Pro Tempore of the Senate to various boards and commissions. The Speaker of the House appointments include:

- Sheriff Len D. Hagaman, Jr., of Watauga County is appointed to the 911 Board for a term expiring on December 31, 2014.
- Sheriff Maynard B. Reid, Jr., of Randolph County is appointed to the North Carolina Sheriffs' Education and Training Standards Commission for a term expiring on June 30, 2015.

Effective: July 2, 2012

SENATE BILLS

SENATE BILL 94, PSAPS Tech Standards/Habitual Misd Larceny, delays until January 1, 2014 any operating standards set by the 911 Board for Public Safety Answering Points (PSAPs).

Effective: June 29, 2012

SENATE BILL 105, Increase Penalties/Murder and DWI Deaths, amends G.S. §14-17 to provide that second degree murder is punished as a B1 felony which carries a minimum active sentence of 144-192 months, except second degree murder shall be punished as a B2 felony, which carries a minimum active sentence of 94-125 months, in either of the following circumstances:

- (1) the malice necessary to prove second degree murder is based on 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.
- (2) the murder is one that was proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other substance described in G.S. § 90-90(1)d, or methamphetamine, and the ingestion of such substance caused the death of the user.

A vehicular homicide where the driver is convicted of second degree murder will be punished as a B2 felony under (1) above.

The bill also raises the punishment level for vehicular homicides caused by driving while impaired. The offense of aggravated felony death by vehicle pursuant G.S. § 20-141.4(a5) (driving while impaired resulting in a death and the driver had a prior conviction of an offense involving impaired driving within 7 years) was not changed from being a Class D felony, but the bill adds: "Notwithstanding the provisions of G.S. § 15A-1340.17, the court shall sentence the defendant in the aggravated range of the appropriate Prior Record Level." The result is that the minimum authorized sentence is raised from 38 to 51 months to 64 to 80 months.

In addition, the crime of felony death by vehicle pursuant to G.S. § 20-141.4(a1) (driving while impaired which results in a death) was raised from a Class E felony to a Class D felony. This means the impaired driver who kills another is eligible for a minimum active prison term of 51 to 64 months. The bill also says: "Notwithstanding the provisions of G.S. 15A-1340.17, intermediate punishment is authorized for a defendant who is a Prior Record Level I offender," meaning probation is authorized even though that class of offense is typically punishable only by an active prison sentence.

Repeat felony death by vehicle pursuant to G.S. § 20-141.4(a6) is punished as a B2 felony. Repeat felony death by vehicle is defined as driving while impaired which results in a death and at the time of the crash the driver had a previous conviction of (1) felony death by vehicle, (2) repeat felony death by vehicle, or (3) second degree murder or manslaughter when engaged in driving while impaired. This punishment did not change but clarifies which second degree murder punishment level is to be used.

Effective: December 1, 2012

SENATE BILL 133, Modernize Jury List Procedures, revises the statutes governing the selection of jurors and the procedure for summoning them to court. One change affecting law enforcement amends G.S. § 9-5 to say that the clerk of superior court shall either (i) prepare and issue the

summonses or (ii) deliver the printed summonses or the list of names and addresses of jurors to the Sheriff, who shall issue the summonses in accordance with the provisions of G.S. § 9-10(a). G.S. § 9-10(a) is amended to say the clerk of court shall serve the summons by first-class mail or shall deliver either printed summonses or the list of the panel of prospective jurors to the Sheriff of the County, who shall summon the persons named. The procedure for service by the Sheriff did not change. Additionally, this legislation limits public access to juror information. An individual can obtain an alphabetized list of juror names but the addresses of prospective jurors are confidential and not subject to disclosure without an order of the court.

Effective: July 12, 2012

SENATE BILL 141, Law Enforcement/Various Other Changes, makes several changes that impact the criminal justice system. Beginning September 1, 2012, a new trespass offense is added by amending G.S. § 14-159.12 to provide that trespassing is a Class A1 misdemeanor if the trespassing occurred at (1) an electric power facility, (2) a facility used for the collection, treatment, testing, storing, pumping, or distribution of water for a public water system, or (3) a liquefied natural gas storage facility or propane air facility, natural gas pipeline and the defendant entered a building, or it was necessary for the person to climb over, go under, or otherwise surmount a fence or other barrier to reach the facility. This offense is punished as a Class H felony if the defendant intended to disrupt the normal operation of any of the facilities or the offense involves an act that places either the defendant or others on the premises at risk of serious bodily injury.

A change effective December 1, 2012, modifies the Motion for Appropriate Relief statutes, G.S. § 15A-1413 and § 15A-1420 to prevent judge shopping by establishing how judges are assigned to hear these motions and to set time limits for resolving motions in non-capital cases.

In 2011 the General Assembly enacted a thirty-day pretrial driver's license revocation for drivers under age 18 who violate specific provisions of the Motor Vehicle Code. It required that the officer file a revocation report with the magistrate who is performing the initial appearance. This required that the young driver be taken before a magistrate even if the offense was not one for which the offender would normally be arrested. Effective October 1, 2012, this bill amends the process so that the officer must file the revocation report but the young driver need not be taken before the magistrate. The amendment says that if the young driver is arrested for the offense, then the revocation report is filed with the magistrate at the initial appearance.

If the young driver is not arrested (so no initial appearance is held on the underlying criminal moving violation), the law enforcement officer must verbally notify the provisional licensee that the provisional licensee's permit or license is subject to revocation pursuant to this section and must provide the provisional licensee with a written form containing notice of the process for revocation and hearing under this section. The Administrative Office of the Courts is to develop this form. The revocation report is filed with the Clerk of Superior Court. This procedure is similar to the procedure for the 30-day pretrial revocation for driving while impaired and the officer obtains a blood test. The clerk will notify the young driver in writing that the revocation begins on the fourth day after the mailing of the notice and continues for 30 days. The notice from the clerk will also include appeal rights. The amendment adds more details on the right of the driver to appeal.

Also, since the driver's license is not seized when it is revoked, the young driver is in possession of a revoked driver's license. This bill added a provision that says possession of a license revoked under this law is not a violation of G.S. § 20-30 which prohibits possession of a revoked license.

The Forensic Science Act, S.L. 2011-19 (House Bill 27) made substantial changes to the State Crime laboratory and required certification of not only the State Crime Laboratory but required that in order for results of a blood alcohol analysis and other types of analyses from a laboratory to be admitted into evidence the analysis must be performed by a certified laboratory. The process for becoming certified takes a significant period of time. The original deadline was June 1, 2012. It was extended until October 1, 2012. The local laboratory in Wilmington and the City County Bureau of Identification in Wake County were concerned about being able to complete the process by the October 1 deadline. In addition, other counties were considering opening their own laboratories. The General Assembly agreed to delay the certification date until July 1, 2013.

In addition, the time for certification of forensic science supervisors and forensic scientist managers at the State Crime Laboratory was moved until January 1, 2013, or as soon as practicable after that date unless no certification is available.

Effective: July 12, 2012

SENATE BILL 227, School Bus Crash Reports Name Disclosure, amends G.S. § 20-166.1(h)(3) to provide that the Division of Motor Vehicles crash report will contain persons and vehicles involved but if the motor vehicle crash involves a school bus or school activity bus, then the name and address of a minor child involved who is a passenger may only be disclosed to (1) the local board of education, (2) the State Board of Education, (3) the parent or guardian of the child, (4) an insurance company investigating a claim arising out of the crash, (5) an attorney representing a person involved in the crash, and (6) law enforcement officials investigating the crash. The name of the minor child will be on the report but the name and address can only be disclosed to the person's listed.

Effective: October 1, 2012

SENATE BILL 229, Amend Environmental Laws 2012, amends G.S. § 113-135.1(a) to raise the civil penalty for violating a rule of the Wildlife Resources Commission that is not also a violation of law from ten dollars (\$10.00) to twenty-five dollars (\$25.00).

Effective: October 1, 2012

SENATE BILL 347, Mental Health Crisis Management, enacts new G.S. § 122C-263.2 to provide that an acute care hospital or other site of first examination that is not operating as a licensable mental health facility, operating a psychiatric, substance abuse, or special care unit, offering psychiatric or substance abuse services, or acting as a mental health facility using reasonable safety or containment measures and precautions, as listed, to manage patients pending involuntary commitment placement is not acting as a 24-hour facility.

Effective: June 29, 2012

SENATE BILL 416, Amend Death Penalty Procedures, modifies procedures involving the death penalty and is referred to in the media as amendments to the Racial Justice Act. The Governor vetoed this bill but the General Assembly voted to override the veto. The bill deletes the requirement that the Governor and Council of State approve the "appliances" for infliction of the death penalty and the superintendent of the State penitentiary has this responsibility. The bill clarifies that a court may discipline or sanction the State for failure to comply with the time requirements in Rule 24 (pretrial conference in capital cases) of the General Rules of Practice in District and Superior Court, but shall not declare a case as noncapital as a consequence of such failure. In addition to any discipline or sanctions the court imposes, the court is required to continue the case for a sufficient time so that the defendant is not prejudiced by any delays in holding the hearing required by Rule 24.

The bill limits evidence of whether race was a significant factor in decisions to seek or impose the death penalty in the defendant's case at the time the death sentence was sought or imposed. For the purposes of this determination, "at the time the death sentence was sought or imposed" is defined as 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.

The defendant must file his motion at the Rule 24 hearing or as a post-conviction motion. The motion must state "with particularity" how the evidence supports a claim that race was a significant factor in the decision to seek or impose the sentence of death in the defendant's case in the county or prosecutorial district at the time the death sentence was sought or imposed. 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. Previously, the defendant need only prove that race was a factor somewhere in the State. Statistical evidence derived from the county or prosecutorial district where the defendant was sentenced to death, or other evidence, that either (i) the race of the defendant was a significant factor or (ii) race was a significant factor in decisions to exercise peremptory challenges during jury selection. The evidence may include, but is not limited to, sworn testimony of attorneys, prosecutors, law enforcement officers, judicial officials, jurors, or others involved in the criminal justice system. However, the bill provides that statistical evidence alone is insufficient to establish that race was a significant factor. The State may offer evidence in rebuttal of the claims or evidence of the defendant, including, but not limited to, statistical evidence.

The defendant who files a motion under this section must waive in writing any objection to receiving a sentence of life without parole.

This new law applies to any case where there has not been an evidentiary hearing on the issue with findings of fact and conclusions of law unless the court order is overturned on appeal.

Effective: July 2, 2012

SENATE BILL 582, Authorize Indian Gaming/Revenue, amends the gambling laws to authorize the modifications to the Tribal Gaming Compact ("Compact") between the Eastern Band of Cherokee Indians ("Cherokees") and the State of North Carolina negotiated by the Governor. Federal law allows states to enter into compacts with federally recognized Indian tribes to authorize gambling. Previously, the Cherokees were limited in North Carolina to video games.

The modification of the Compact and the change in the law allows Class III games at up to three locations in North Carolina. The games authorized include (1) gaming machines, (2) live table games, (3) Raffles, as defined in G.S. § 14-309.15(b), and (4) video games, as defined in G.S. § 14-306 and G.S. § 14-306.1A. According to the Governor's Office, the Compact gives the Cherokees exclusive rights to live table gaming west of Interstate 26 for 30 years and the Cherokees agree to pay the State five (5) percent of the revenue from the live table gaming for the first (5) five years with the percentage increasing up to eight (8) percent over the 30 year term of the Compact. Senate Bill 582 establishes the Indian Gaming Education Revenue Fund. The State Board of Education will allocate these funds to local school boards on a basis of allotted average daily membership. The United States Department of the Interior approved the Compact.

Effective: June 6, 2012

SENATE BILL 635, Minors/Sentencing for 1st Degree Murder, is a response to the decision of the Supreme Court of the United States in *Miller v. Alabama*, 567 U.S. ____ (2012) which held that a mandatory life sentence without parole for a defendant who is a minor at the time of the offense amounts to cruel and unusual punishment and violates the Eight Amendment to the United States Constitution. This legislation was enacted to modify North Carolina's sentencing for first degree murder if the defendant was under the age of eighteen (18) at the time of the offense. G.S. § 14-1476 defines life imprisonment with parole as a sentence of a minimum of twenty-five (25) years before becoming eligible for parole. G.S. § 14-1477 provides for life imprisonment with parole if the minor is convicted of first degree murder based upon the felony murder rule. If the minor is convicted on the premeditation and deliberation theory, then a sentencing hearing must be held where the court considers whether the sentence should be life imprisonment without parole or the lesser sentence of life imprisonment with parole. The defendant may submit evidence of any mitigating factors including (1) age at the time of the offense, (2) immaturity, (3) ability to appreciate the risks and consequences of the conduct, (4) intellectual capacity, (5) prior record, (6) mental health, (7) familial or peer pressure exerted upon the defendant, and (8) likelihood that the defendant would benefit from rehabilitation in confinement. This new procedure also applies to any person required to be resentenced based upon the Supreme Court of the United States decision.

Effective: July 12, 2012

SENATE BILL 699, Courts and Investigations, renames the Division of Criminal Statistics in the Department of Justice as the Division of Criminal Information. The bill also renames the Police Information Network as the Division of Criminal Information Network.

Effective: July 12, 2012

SENATE BILL 707, School Violence Prevention Act, is intended to address bullying and harassment at schools. G.S. § 14-33, the assault statute, is amended to add a new subsection which says that school personnel who take reasonable actions in good faith to end a fight or altercation between students shall not incur any civil or criminal liability as the result of those actions. School personnel are those people listed in G.S. § 14-33(c)(6) for purposes of assault on school personnel and include: (1) an employee of a local board of education or a charter school or a nonpublic school; (2) an independent contractor or an employee of an independent contractor of a local board of education, charter school or a nonpublic school; and (3) an adult

who volunteers his or her services or presence at any school activity and is under the supervision of an individual listed (1) or (2).

Also, no school employee shall 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 board policies. G.S. § 115C-390.3(d).

The cyber-bullying statute, G.S. § 14-458.1(a)(3), was amended to make it unlawful to make a true or false statement which is intended to provoke, and is likely to provoke, a third party to stalk or harass a minor. Also, the statute was clarified that signing a minor up for a pornographic website or electronic mail or messages is illegal if the intent is to intimidate or torment the minor.

Effective December 1, 2012, a new crime of cyber-bullying a school employee by a student is enacted. This law makes it a Class 2 misdemeanor for a student to: (1) build a fake profile or website; (2) post or encourage others to post on the Internet private, personal, or sexual information pertaining to a school employee; (3) post a real or doctored image of the school employee on the Internet; (4) access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password-protected account or stealing or otherwise accessing passwords; or (5) use a computer system for repeated, continuing, or sustained electronic communications with a school employee.

Making a true or false statement about a school employee which is intended to provoke, and is likely to provoke, a third party to stalk or harass a school employee is illegal. It is also illegal to sign the school employee up for a pornographic website or electronic mail or messaging. A school employee includes a contractor that works with a school. If a student is convicted and fulfills probation, the conviction and charge may be dismissed by the court. A student who is convicted of cyber-bullying of a school employee must be transferred to another school or if there is no other appropriate school, the student must be transferred to a different class or assigned to a teacher who was not the victim. G.S. § 115C-366.4.

Any assault of a school employee which results in physical injury must be reported by the employee's supervisor to the principal. The principal, superintendent and employee's supervisor shall not discourage a school employee from reporting an assault by a student to law enforcement. G.S. § 115C-289.1.

G.S. § 15A-301 is amended to prohibit issuing a warrant for arrest, order for arrest, criminal summons, or other criminal process by a magistrate against a school employee, as defined in G.S. 14-33(c)(6), for an offense that occurred while the school employee was in the process of discharging his or her duties of employment, without the prior written approval of the district attorney or the district attorney's designee.

This restriction does not apply if the offense is a traffic offense or if the offense occurred in the presence of a sworn law enforcement officer. If the district attorney declines this authority, the Chief District Court Judge is required to appoint a magistrate to review all requests for such criminal process.

G.S. § 14-33(c)(6) defines a school "employee" to mean:

1. an employee of a local board of education; or a charter school authorized under G.S. 115C-238.29D, or a nonpublic school which has filed intent to operate under Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes;
2. an independent contractor or an employee of an independent contractor of a local board of education, charter school authorized under G.S. § 115C-238.29D, or a nonpublic school which has filed intent to operate under Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes, if the independent contractor carries out duties customarily performed by employees of the school.

G.S. § 14-33(c)(6) defines "duties" to mean:

1. all activities on school property;
2. all activities, wherever occurring, during a school authorized event or the accompanying of students to or from that event; and
3. all activities relating to the operation of school transportation.

A new G.S. § 115C-46.2 is enacted to prohibit a probation officer from visiting a probationer during school hours on school property without authorization. Authorization can include a request from school administrators, guidance counselors or school resource officers. Each local school board is to adopt its own policy.

Effective December 1, 2012, a new G.S. § 15A-1331B is enacted that limits PJC's for a Class B1, B2, C, D or E felony to twelve (12) months from the date of the conviction. Prior to the end of that time the State must pray judgment and the court shall enter a judgment which includes a sentence. For good cause, the PJC can be extended for an additional 12 months but no more than one additional 12 month period is allowed.

Effective: July 12, 2012

SENATE BILL 738, Sole Source Ed. Requirements/Bail Bondsmen, amends G.S. § 58-71-71 to require the continuing education of bail bondsmen and runners to be provided by the North Carolina Bail Agents Association.

Effective: October 1, 2012

SENATE BILL 749, Various Motor Vehicle Law Changes, makes numerous technical changes to the motor vehicle code primarily relating to size and weight of vehicles. These changes include:

- Effective January 1, 2013, a driver's license that is issued to someone who is only in the country legally for a short time must include its limited duration on the license by including a "distinguishing mark or designation on the face of the license."

- The exemption from registration of a farm vehicle under G.S. § 20-51(6) was expanded to include vehicles transporting "livestock, live poultry, animal waste, pesticides, and/or seeds."
- A new exemption from registration under G.S. § 20-51 was created: "(17) A header trailer when transported to or from a dealer, or after a sale or repairs, to the farm or another dealership."
- Any vehicle weighing greater than the maximum limits found in G.S. § 20-118(b), but is authorized by G.S. § 20-118(c)(12), (c)(14), and (c)(15), must be registered for the maximum weight allowed for the vehicle configuration as listed in G.S. § 20-118(b).
- Self-propelled farm equipment with or without implements, not exceeding 25-feet in width that may operate on a highway pursuant to G.S. § 20-116(j) must not be operated on a controlled access highway or interstate unless specifically authorized by the Department of Transportation.
- The exception to the weight requirements under G.S. § 20-118(c) for agricultural products is expanded to include (1) "meats, live poultry, or agricultural crop products transported from a farm to a processing plant or market," (2) trees grown as Christmas trees from the field, farm, stand, or grove, and other forest products, including chips and bark, to a processing point, and (3) water, fertilizer, pesticides, seeds, fuel, and animal waste transported to or from a farm by a farm vehicle as defined in G.S. § 20-37.16(e)(3).
- Overweight and size exemption for vehicles owned and operated by a state or local government or cooperating federal agency was expanded to include "performance of other required duties for emergency preparedness and fire prevention." These duties include "movement of equipment for the purpose of hazardous fuel reduction, training, equipment maintenance, pre-suppression fire line installation, fire prevention programs, and equipment staging."
- Effective December 1, 2012, commercial motor vehicle windshields must comply with the requirements of 49 C.F.R. 393 which limits tinting, discoloration and cracking of windshields.
- Effective December 1, 2012, the window tinting exemptions under G.S. § 20-127(c) (2) for a window of a for-hire passenger vehicle, as defined in G.S. § 20-4.01(27)(b), and (c) (3) for a window of a common carrier of passengers, as defined in G.S. § 20-4.01(27)(c) were both repealed.
- Effective December 1, 2012, G.S. § 20-137.4A added a new prohibition for any person to operate a commercial motor vehicle subject to Part 390 or 392 of Title 49 of the Code of Federal Regulations on a public street or highway or public vehicular area while using a mobile telephone or other electronic device in violation of those parts. This restriction does not apply to hands-free technology. This offense is an infraction and punishable by a penalty of one hundred dollars (\$100.00) and court costs. G.S. § 20-137.4A(c).

- G.S. § 136-89.213 is amended to provide that the Turnpike Authority is required to keep confidential "photographs or other recorded images or automatic vehicle identification or driver account information generated by radio-frequency identification or other electronic means" related to collection of tolls or user fees and only release the information by the consent of the driver or a court order.

Effective: June 26, 2012

SENATE BILL 816, Banking Law Modernization Act, repeals Article 10 of Chapter 53 of the General Statutes and enacts a new Chapter 53C to the General Statutes entitled " Regulation of Banks and Other Financial Services." This bill is a rewrite of North Carolina's banking laws. Most of the changes involve regulation of banks by the Commissioner of Banks. There are several new crimes:

- A bank examiner who makes a false report about the condition of a bank that the examiner has examined is guilty of a Class H felony. G.S. § 53C-8-7.
- An examiner or other employee of the Office of the Commissioner of Banks who keeps secret the information obtained in an examination of a bank except as otherwise provided in G.S. Chapter 53C is guilty of a Class 1 misdemeanor. G.S. § 53C-8-8.
- Subject to certain exceptions, a bank officer, director, or employee who makes an extension of credit or grants 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 is guilty of a Class 1 misdemeanor and the person violating this provision may be fined a sum equal to the amount of the extension made or gratuity given. G.S. § 53C-8-9.
- A person who willfully and maliciously makes a false and derogatory statement about the financial condition of a bank is guilty of a Class 1 misdemeanor. G.S. § 53C-8-10.
- Five bank fraud offenses are created, 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. G.S. § 53C-8-11.

Effective: October 1, 2012

SENATE BILL 828, Unemployment Insurance Changes, amends G.S. §96-18(a) so that knowingly making a false statement or knowingly failing to disclose a material fact to the Employment Security Commission is a Class I felony if the person receives more than four hundred dollars (\$400.00) of benefit and a Class 1 misdemeanor if the value of the benefit is four hundred dollars (\$400.00) or less. Previously, any violation was a Class 1 misdemeanor.

Effective: June 29, 2012

SENATE BILL 847, GSC Technical Corrections/Other Changes, makes numerous technical changes which are mostly grammatical and typographical. This bill does include some substantive changes.

Effective December 1, 2012, section 63.3.(a) amends G.S. § 7A-38.5 by adding new subsections to require that each chief district court judge and district attorney shall refer any misdemeanor criminal action in district court that is generated by a citizen-initiated arrest warrant to the local mediation center for resolution, except for (i) any case involving domestic violence; (ii) any case in which the judge or the district attorney determines that mediation would be inappropriate; or (iii) any case being tried in a county in which mediation services are not available. The mediation center shall have 30 days to resolve each case and report back to the court with a resolution. The district attorney shall delay prosecution in order for the mediation to occur. If the case is not resolved through mediation within 30 days of referral, the court may proceed with the case as a criminal action. For purposes of this section, the term "citizen-initiated arrest warrant" means a warrant issued pursuant to G.S. § 15A-304 by a magistrate or other judicial official based upon information supplied through the oath or affirmation of a private citizen. Any prosecutorial district may opt out of the mandatory mediation, if the district attorney files a statement with the chief district court judge declaring that subsection shall not apply within the prosecutorial district. Where an agreement has been reached in mediation and the case will be dismissed, the defendant is required to pay to the clerk the dismissal fee, currently sixty dollars (\$60.00) set forth in G.S. § 7A-38.7. By agreement, all or any portion of the fee may be paid by a person other than the defendant. The amendment deleted the authority of the court to waive the payment of the dismissal fee.

Section 71 of this Senate Bill amends Article 13A of Chapter 90 of the General Statutes which licenses persons who provide funeral services to prevent licensing of a person "who has been convicted of a sexual offense against a minor." The phrase "sexual offense against a minor" is defined in the new G.S. § 90-210.25B, to include specific sexual offenses with minors set forth in Chapter 14. Funeral services include engaging in the care or disposition of dead human bodies or in the practice of disinfecting and preparing by embalming or otherwise dead human bodies for the funeral service, transportation, burial or cremation, or in the practice of funeral directing or embalming as presently known, whether under these titles or designations or otherwise. "Practice of funeral service" also means engaging in making arrangements for funeral service, selling funeral supplies to the public or making financial arrangements for the rendering of such services or the sale of such supplies. G.S. § 90-210.20(k). The law previously prohibited the Board of Funeral Services from issuing a license to any person who was not of "good moral character," G.S. § 90-210.25. This amendment specifically prevents licensing of persons who have been convicted of the specified sexual offenses involving minors.

Effective: July 17, 2012

SENATE BILL 881, Transfer Evidence Warehouse to DPS, makes technical and organizational changes to the statutes governing the North Carolina Department of Public Safety (DPS) which was created effective January 1, 2012, by combining the Department of Crime Control and Public Safety, the Department of Correction and the Department of Juvenile Justice and Delinquency Prevention. The bill also revises G.S. § 14-202(m) to exempt personnel of the Division of Juvenile Justice, the same as probation officers, from secret peeping laws when they act for security purposes or during the investigation of alleged misconduct by a person in the custody of that Division. The bill renames the Division of Adult Correction's substance abuse program as the Alcoholism and Chemical Dependency Treatment Program and revises the description of the program. G.S. § 143B-704(d).

The evidence warehouse was operated by Law Enforcement Support Services of the Department of Crime Control and Public Safety before the consolidation. G.S. § 143B-600(a)(7) and G.S. § 143B-601 are amended to place operation of the evidence warehouse under the Office of External Affairs in the DPS. All state-owned personal property located in or associated with the warehouse and all evidence of any type, including rape kits, located in the warehouse are reallocated and transferred to the Office of External Affairs in the Department of Public Safety. The warehouse is renamed the "Victim Services Warehouse," G.S. § 143B-704(d), and DPS shall:

- Provide central storage and management of evidence according to the provisions of Article 13 of Chapter 15A of the General Statutes and create and maintain a databank of statewide storage locations of post conviction evidence or other similar programs.
- Provide central storage and management of rape kits according to the federal Violence Against Women and Department of Justice Reauthorization Act of 2005 with specific protections against release of names of victims providing anonymous or "Jane Doe" rape kits without victim consent.
- Provide for the storage and management of evidence.

Effective: June 26, 2012

SENATE BILL 895, DOT Division of Motor Vehicles Leg. Requests. Effective July 1, 2012, the requirements for obtaining a motorcycle endorsement are changed. G.S. § 20-7(a1) is amended to allow the Division of Motor Vehicles ("DMV") to issue a motorcycle endorsement to a person age eighteen (18) or older if the person passes a knowledge test and a road test or, instead of the road test, presents proof of successful completion of (1) the North Carolina Motorcycle Safety Education Program Basic Rider Course or Experienced Rider Course or (2) any course approved by the Commissioner consistent with the instruction provided through the Motorcycle Safety Instruction Program established under G.S. § 115D-72. A person under age eighteen (18), in order to obtain a motorcycle learner's permit, must pass a knowledge test concerning motorcycles and provide proof of successful completion of (1) the North Carolina Motorcycle Safety Education Program Basic Rider Course or Experienced Rider Course or (2) any course approved by the Commissioner consistent with the instruction provided through the Motorcycle Safety Instruction Program established under G.S. § 115D-72.

Also effective July 1, 2012, G.S. § 20-7(a2) is amended to provide that in order to obtain a motorcycle learner's permit, a person under age 18, must pass a knowledge test and show successful completion of (1) the North Carolina Motorcycle Safety Education Program Basic Rider Course or Experienced Rider Course or (2) any course approved by the Commissioner consistent with the instruction provided through the Motorcycle Safety Instruction Program established under G.S. § 115D-72.

Also effective July 1, 2012, G.S. § 20-7(a2) is amended to require that a person under age 18, in order to obtain a motorcycle learner's permit, must pass a knowledge test and show successful completion of (1) the North Carolina Motorcycle Safety Education Program Basic Rider Course

or (2) any course approved by the Commissioner consistent with the instruction provided through the Motorcycle Safety Instruction Program established under G.S. § 115D-72.

In 2011, the General Assembly provided for the notation of a military veteran's status on the driver's license. DMV was required to include this notation "when the Division of Motor Vehicles has completed the implementation of the Division's Next Generation Secure Driver License System or July 1, 2012, whichever occurs first," S.L. 2011-35. This bill extends the date to July 1, 2013 or when the Division of Motor Vehicles has completed the implementation of the Division's Next Generation Secure Driver License System.

Commercial Drivers License ("CDL") endorsements H and X concerning hazardous materials are required to be renewed every five (5) years and the Transportation Security Administration of the Department of Homeland Security is required to perform a threat assessment prior to the renewal. S.L. 2011-228, required that the CDL expire when a driver's threat assessment expires. This requirement was to begin July 1, 2012. This bill delays S.L. 2011-228 and this requirement until July 1, 2013 or when the Division of Motor Vehicles has completed the implementation of the Division's Next Generation Secure Driver's License System.

Effective: June 26, 2012

SENATE BILL 910, Sale of a Minor/Felony Offense, adds a new G.S. § 14-43.14 which makes it a felony for a person who is acting with willful or reckless disregard for the life or safety of a minor, to participate in any of the following: the acceptance, solicitation, offer, payment, or transfer of any compensation, in money, property, or other thing of value, at any time, by any person in connection with the unlawful acquisition or transfer of the physical custody of a minor. This section does not apply to actions that are ordered by a court, authorized by statute, or otherwise lawful. A person who violates this law is guilty of a Class F felony and shall pay a minimum fine of five thousand dollars (\$5,000). For each subsequent violation, a person is guilty of a Class F felony and must pay a minimum fine of ten thousand dollars (\$10,000). A violation of this section is a lesser included offense of G.S. 14-43.11 (Human Trafficking). The court may also order a person convicted of this offense to register as a sex offender.

A minor whose parent, guardian, or custodian has sold or attempted to sell the minor is classified as an abused juvenile as defined by G.S. 7B-101(1). The court may place the minor in the custody of the Department of Social Services or with such other person as is in the best interest of the minor.

Effective: December 1, 2012

SENATE BILL 951, Transfer Certain Correctional Facilities, transfers the former Cleveland County Correctional Facility to the Cleveland County Community College. This bill also transfers the former Haywood Correctional Center to the Board of Commissioners of Haywood County.

Effective: July 1, 2014

IMPORTANT LEGISLATION NOT ENACTED INTO LAW

HOUSE BILL 111, Amend Firearms Law, would allow persons with a concealed carry handgun permit to carry a gun concealed in a restaurant or local government park. This bill remains in the Senate and was not enacted into law.

HOUSE BILL 334, Sports Agents/DMV Police Authority, would expand the law enforcement authority of DMV officers and inspectors. This bill would have authorized DMV officers to:

- (1) enforce criminal laws when they have probable cause to believe someone has committed a criminal act in their presence regardless of whether they are engaged at the time in enforcing laws otherwise in their jurisdiction;
- (2) perform additional duties as peace officers when directed by the Governor; and
- (3) to investigate crimes and make arrests for crimes occurring on property owned or leased by DOT.

However, **at the request of the North Carolina Sheriffs' Association**, the Department of Public Safety, and others, this bill was amended to remove all provisions related to expanding the law enforcement authority of the DMV. This bill, as amended, was passed by the Senate and assigned to the House Committee on Commerce and Job Development but was not enacted into law.

HOUSE BILL 690, Amend Evidence & DNA Expunction Laws, would amend the preservation of evidence law and the evidence rules to allow use of affidavits. This bill was considered by the Senate this session but was not enacted into law.

HOUSE BILL 1180, Video Sweepstakes Entertainment Tax, would legalize video sweepstakes and tax the proceeds. This bill was not enacted into law. **This bill was opposed by the North Carolina Sheriffs' Association.**

SENATE BILL 434, Juvenile Age to 18, would raise the age at which North Carolina juveniles can be charged as adults from age 16 to age 18. This bill was not enacted into law. **This bill was opposed by the North Carolina Sheriffs' Association.**

SENATE BILL 626, LRC to Study Ferry Tolls/Juvenile Justice Reforms, would direct the Legislative Research Commission to study North Carolina's current juvenile justice system and to identify reforms that may reduce long-term recidivism. This bill was passed by the House and sent to the Senate but was not enacted into law.

SENATE BILL 756, Amend Bail Law/Pretrial Release, would make various changes to pretrial release programs to include allowing the use of unsecured appearance bonds and to shorten the timeframe in which pretrial release programs are not allowed to contact a defendant from 72 to 48 hours. This bill was not enacted into law.