
FINAL LEGISLATIVE REPORT

2011

North Carolina Sheriffs' Association



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NORTH CAROLINA SHERIFFS' ASSOCIATION

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The 2011 Session of the North Carolina General Assembly convened at noon on Wednesday, January 26, 2011 and adjourned at 12:15 p.m. on Saturday, June 18, 2011. The General Assembly reconvened on Wednesday, July 13, 2011 and adjourned again on Thursday, July 28th. The July session was authorized to only consider a narrow list of bills, namely redistricting, election laws, legislative appointments to boards and commissions, bills vetoed by the governor, and bills already in a conference committee.

The General Assembly met again on Monday, September 12, 2011 and adjourned on Wednesday, September 14, 2011. This brief session was primarily to consider proposed constitutional amendments, technical changes, and make changes in the appointments to study committees. At the close of the September session, an adjournment resolution was adopted that will bring the General Assembly back to Raleigh on Monday, November 7, 2011 to potentially consider various issues but primarily to address any legal issues related to redistricting.

Through the September session of the 2011 Session of the General Assembly, 938 House bills and 792 Senate bills were introduced, for a total of 1,730 legislative bills available for consideration. Of the 1,730 legislative bills introduced, 419 of them were enacted into law, which is 24%. Governor Beverly Perdue signed 290 bills (with one more pending her signature at press time that she is expected to sign), allowed 14 to become law without her signature, and vetoed 15 bills with 6 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 bills enacted into law this Session; and (2) relevant provisions of the 2011 State Budget Bill.

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 200 AS AMENDED BY HOUSE BILL 22 AND HOUSE BILL 642

House Bill 200 is the State's budget bill by which North Carolina government must operate for the 2011-2012 fiscal year. House Bill 22 is a "budget technical corrections" bill that was passed later in the 2011 session that made minor changes (amendments) to the previously passed budget bill. House Bill 642, Justice Reinvestment Act, made a few changes to costs and fines.

- The State Controller, in cooperation with the State Chief Information Officer, is to continue to implement and expand Criminal Justice Law Enforcement Automated Data Services (CJLEADS) which integrates data maintained within the State's various criminal justice databases and provides up-to-date information in a centralized location for use by state and local government criminal justice professionals. The State Controller is required to review the plan to transfer CJLEADS to the Department of Justice and make a recommendation to the Joint Legislative Oversight Committee on Information Technology about managing and hosting of CJLEADS. A new Leadership Council for CJLEADS is created.
- The Criminal Justice Information Network (CJIN) is transferred to the Office of the State Chief Information Officer from the Department of Crime Control and Public Safety (DCC&PS).
- The Division of Motor Vehicles is required to begin the replacement of the State Titling and Registration System (STARS) and the State Automated Driver License System (SADLS). By October 1, 2011, a plan and time line is to be developed for accomplishing the replacement of both systems.
- The Study Committee on Consolidation of Judicial and Prosecutorial Districts is established to study the number and structure of judicial districts and prosecutorial districts. This Committee is to report to the legislature in 2012.
- The Department of Correction (DOC) may use funds available to the DOC for the 2011-2013 fiscal biennium to pay the sum of \$40 per day as reimbursement to counties for "jail backlog" which is the cost of housing convicted inmates, parolees, and post-release supervisees awaiting transfer to the State prison system, as provided in G.S. § 148-29.
This bill was supported by the North Carolina Sheriffs' Association.
- The Administrative Office of the Courts is to develop procedures to offer Administrative Court sessions in each district court district to hear Chapter 20 (Motor Vehicle Law) infractions. Each district is required to hold Administrative Court regularly by October 1, 2011.
- Effective January 1, 2012, the General Assembly combines the Department of Crime Control and Public Safety (DCC&PS), the Department of Correction (DOC), and the Department of Juvenile Justice and Juvenile Delinquency (DJJDP) into a new Department of Public Safety (DPS).

- The State Highway Patrol, Alcohol Law Enforcement Division, State Capitol Police, and State Bureau of Investigation are required to report by March 1, 2012 to the General Assembly on any national associations that provide accreditation services for those law enforcement agencies, including, but not limited to the Commission on Accreditation for Law Enforcement Agencies (CALEA). The report must include an itemization of the personnel and other costs associated with obtaining those services, a summary of the accreditation process, and a summary of the benefits gained from the services.
- The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee will study whether to charge a fee for services provided by the State Highway Patrol for certain special events.
- The Law Enforcement Support Services Division (LESS) of the Department of Crime Control and Public Safety (CCPS) was abolished. LESS provided excess Department of Defense equipment to state and local law enforcement agencies to use in law enforcement activities as well as evidence storage and vehicles for use in undercover operations. The responsibility to act as the agency for federal surplus property still remains with the Department of Crime Control and Public Safety. According to CCPS staff, the services provided by LESS are being continued through December 31, 2011 by contractors. After the end of the year, the program will change but the details are not final at this time. However, the ability to purchase surplus Department of Defense equipment will continue. The telephone numbers and contacts remain the same through the end of the year.
- Court costs under G.S. § 7A-304 cannot be waived by the judge and must be paid by the defendant, unless the judge makes a written finding of just cause to grant a waiver.
- On July 1, 2011, court costs for criminal cases in district court were increased by \$29 and in superior court by \$52. The increased costs are for support of the General Court of Justice and are paid to the General Fund.
- On August 1, 2011, the following new court costs and fees will be imposed:
 - (1) Court costs for district court cases are raised \$18. This new fee is remitted to the Statewide Misdemeanant Confinement Fund in the DOC. See House Bill 642.
 - (2) A fee of \$50 is imposed for all offenses arising under Chapter 20 of the General Statutes that result in a conviction of an improper equipment offense. This \$50 fee is remitted to the Statewide Misdemeanant Confinement Fund in the DOC.
 - (3) The fee for service of civil process increased from \$15 to \$30 in G.S. § 7A-311(a).
 - (4) The daily jail fee increased from \$5 to \$10.
 - (5) The nonemergency medical care fee in G.S. § 153A-225 increased from a maximum of \$10 to a maximum of \$20 per incident.
- The State Highway Patrol must reduce their budget by \$4.56 million in fiscal year 2011-2012 and \$13.2 million in fiscal year 2012-2013. The State Highway Patrol is authorized to freeze Trooper positions or eliminate other sworn or civilian positions to achieve this

budgetary reduction, but is encouraged to find efficiencies and savings elsewhere in the Patrol's administrative structure. Additionally, the State Highway Patrol may eliminate filled positions but shall not eliminate sworn law enforcement officer positions assigned to districts for the purposes of traffic and commercial motor vehicle enforcement, unless the State Highway Patrol has first achieved 25% of the required savings elsewhere in the operation of the Patrol, including through staffing reductions in its administrative structure and areas other than district-level enforcement operations. If the State Highway Patrol must eliminate district-level enforcement positions to meet the savings required by this section, then the Patrol is required to maintain balanced law enforcement coverage among the troops and is authorized to move trooper positions from one troop to another to maintain balanced coverage.

- Funding for support staff was reduced in the district attorney offices across the state by 55 positions from 550 to 495.
- Vacant magistrate positions were eliminated based on workload. The Administrative Office of the Courts' workload formula for magistrates indicates that there are over 60 more magistrates than necessary for the workload. This provision will eliminate 19 positions currently vacant and an additional 42 vacancies occurring on January 1, 2013.
- All State funding for the Drug Treatment Court program was eliminated by cutting 32 positions.
- The North Carolina Department of Justice was directed to eliminate over 40 vacant positions throughout the department. The State Bureau of Investigation must reduce its staff based on actual workloads by 18 positions and must sell one of three aircraft that the SBI operates. Also, the North Carolina Justice Academy must consolidate administration of the two training academies (East Campus and West Campus) and increase receipts for the use of facilities by non-law enforcement agencies. Five positions at the Justice Academy must be eliminated.
- The Department of Correction (DOC) must reduce 60 administrative positions and eliminate 255 vacant positions. Funding for Community Work Crews has been eliminated. The number of Chaplains has been reduced by 25, leaving at least one Chaplain at each of the 14 close custody prisons.
- The DOC is directed to close four minimum custody prisons, which will eliminate 203 positions from those facilities. DOC must also reduce 18 diagnostic center positions at Neuse Correctional Institution and Fountain Correctional Center for Women, no longer accept misdemeanants with sentences of six months (180 days) or less. Misdemeanants with sentences of longer than six months (180 days) and Driving While Impaired misdemeanants will remain in the custody of the DOC. The closing of prisons and elimination of positions are part of the Justice Reinvestment Act.
- State Capitol Police is reorganized to focus on security in and around State-owned buildings in Wake County and 40 positions were eliminated.

- Alcohol Law Enforcement must reduce administrative staff positions by five while increasing their North Carolina Education Lottery receipts by \$200,000.

HOUSE BILLS

HOUSE BILL 3, Exclusionary Rule/Good Faith Exception, amends G.S. § 15A-974 to include a “good faith exception” to the exclusionary rule providing that in a criminal case evidence shall not be suppressed for a violation of Chapter 15A (Criminal Procedure Act) if the person committing the violation acted under the objectively reasonable, good faith belief that the actions were lawful.

The Supreme Court of North Carolina previously ruled in the case of *State v. Carter*, 322 N.C. 709 (1988), that the good faith exception to the exclusionary rule adopted by the Supreme Court of the United States does not exist in the North Carolina State Constitution.

While the General Assembly has included a good faith exception to the exclusionary rule in the General Statutes, only the Supreme Court of North Carolina can decide if the North Carolina Constitution allows evidence to be admitted in a criminal trial under a good faith exception to the exclusionary rule when the officer acted in good faith but made a mistake.

House Bill 3 asks the Supreme Court of North Carolina to reconsider its decision in *State v. Carter* and to hold that there is a good-faith exception to the exclusionary rule in the North Carolina Constitution. Because of the separation of powers doctrine, this request of the General Assembly has no binding legal effect on the Supreme Court of North Carolina. Certainly the Supreme Court will be aware of the General Assembly’s actions and request when the next case comes before the Court advocating for a decision finding a good faith exception to the exclusionary rule in the North Carolina Constitution.

For a more detailed analysis of both the act’s application to violations of G.S. § Chapter 15A and the scope of the good-faith exception to the exclusionary rule for constitutional violations, see Bob Farb, New North Carolina Legislation on Good Faith Exception to Exclusionary Rules, posting to North Carolina Criminal Law: UNC School of Government Blog <http://sogweb.sog.unc.edu/blogs/ncclaw/?p=2058> (Mar. 21, 2011).

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

Effective: July 1, 2011

HOUSE BILL 12, Stop Methamphetamine Labs, continues efforts begun with the Methamphetamine Lab Prevention Act of 2005 to regulate the sale of pseudoephedrine products that are used to manufacture methamphetamine. This act requires the use of electronic tracking of pseudoephedrine sales as is being done in several states, including those states bordering North Carolina.

Effective January 1, 2012, this act adds a new G.S. § 90-113.52A which requires a retailer, before completing a sale of a product containing a pseudoephedrine product, to electronically submit the required information to the National Precursor Log Exchange (NPLEx) administered by the National Association of Drug Diversion Investigators (NADDI). The seller shall not complete the sale if the system generates a stop alert.

The system contains an override function that may be used by a dispenser of a pseudoephedrine product who has a reasonable fear of imminent bodily harm if the dispenser does not complete a sale. Each instance in which the override function is utilized is logged by the system. Contacting the NPLeX system is only required if the system is available to retailers in this State without a charge for accessing the system and the retailer has Internet access. If there is a failure in the system, the retailer may make the sale but must note that the sale was made without submission to the NPLeX system in the record of disposition required under G.S. § 90-113.52. NADDI will send the information to the State Bureau of Investigation (SBI) once the SBI and NADDI enter into a memorandum of understanding.

On or after January 1, 2012, the failure of a retailer to comply with the law is a Class A1 misdemeanor for the first violation and a Class I felony for any subsequent violations. A violation by a purchaser or employee is a Class 1 misdemeanor for the first offense, a Class A1 misdemeanor for a second offense and a Class I felony for a third or subsequent offense.

The SBI is to participate in the High Intensity Drug Trafficking Areas (HIDTA) program, assist in coordinating drug control efforts between local and State law enforcement agencies, and monitor the implementation and effectiveness of the electronic record-keeping requirements. The SBI is to report the number of methamphetamine laboratories discovered in the State each calendar year and the effectiveness of this electronic record-keeping requirement. The SBI is required to report to the Legislative Commission on Methamphetamine Abuse by March 1, 2012 and each March 1 thereafter. **This bill was supported by the North Carolina Sheriffs' Association.**

Effective: June 23, 2011

HOUSE BILL 18, Restore Firearms Rights/Technical Corrections, clarifies that the effective date of G.S. § 14-415.4(l), which was enacted in 2010, is February 1, 2011. It also makes G.S. § 14-415.4(l) apply to offenses committed on or after the effective date.

G.S. § 14-415.4(l) reads:

Criminal Offense to Submit False Information – A person who knowingly and willfully submits false information under this section is guilty of a Class 1 misdemeanor. In addition, a person who is convicted of an offense under this subsection is permanently prohibited from petitioning to restore his or her firearms rights under this section.

Effective: March 5, 2011

HOUSE BILL 27, Forensic Sciences Act, makes changes that affect the State Bureau of Investigation (SBI) laboratory. The laboratory remains a part of the SBI, but it is renamed the State Crime Laboratory (State Crime Lab).

G.S. § 114-16 is amended to direct the SBI to provide service to the “public and criminal justice system” (was, “prosecuting officers of the State”).

A new law, G.S. § 114-16.1, establishes a sixteen-member North Carolina Forensic Science Advisory Board within the Department of Justice, which consists of the State Crime Lab Director and fifteen members appointed by the Attorney General. The appointments must conform to the requirements in the new statute—for example, one member must be the Chief

Medical Examiner, another must be a scientist with an advanced degree and experience in forensic chemistry, and similar such appointments. The new advisory board may review State Crime Lab operations, make recommendations and, on request of the Lab Director, review analytical work, reports, and conclusions of scientists employed by the Lab. This last category of review is confidential as provided in new G.S. § 114-16.1(f).

The SBI is directed to “seek collaborative opportunities and grant funds for research programs... on human observer bias and sources of human error in forensic examinations.” It directs the State Crime Lab to develop standard operating procedures to minimize potential bias and human error.

Forensic science professionals at the State Crime Lab are required to obtain individual certifications consistent with international and ISO standards no later than June 1, 2012. All of other forensic scientists are allow until October 1, 2012 to comply based upon an amendment to this bill by Senate Bill 684. The certification does not apply if no certification is available.

Effective July 1, 2011, the position of ombudsman is created in the State Crime Lab within the North Carolina Department of Justice. The primary purpose of the ombudsman is to work with defense counsel, prosecutorial agencies, criminal justice system stakeholders, law enforcement officers, and the general public to ensure that State Crime Lab practices and procedures are consistent with state and federal law, best forensic practices, and the interests of justice. The ombudsman must mediate if any complaints arise between the SBI and others and must regularly attend meetings of the district attorneys, district and superior court judges, public defenders, Advocates for Justice (formerly known as the Academy of Trial Lawyers), and the North Carolina Bar Association’s criminal law section.

G.S. § 8-58.20 has previously allowed a lab report of a written forensic analysis to be admitted in evidence at trial without the testimony of the analyst if certain procedures are followed. In the future, for a forensic analysis to be admissible under that statute, it must be performed by a lab that is accredited as specified in the amended statute. The act makes similar changes to G.S. § 20-139.1(c2) on the admissibility of a chemical analysis of blood or urine without the testimony of the analyst.

G.S. § 15A-903(a) (1) is amended to specify what information must be disclosed when there is a scientific test or examination. As amended, this statute now states that “when any matter or evidence is submitted for testing or examination, in addition to any test or examination results, all other data, calculations, or writings of any kind shall be made available to the defendant, including, but not limited to, preliminary test or screening results and bench notes.”

As amended, G.S. § 15A-903(c) now requires all public and private entities that obtain information related to the investigation of the crimes committed or the prosecution of the defendant to disclose such information to the referring prosecutorial agency for disclosure to the defendant. A new G.S. § 15A-903(d) is added and makes it a Class H felony for a person to willfully omit or misrepresent evidence or information required to be disclosed under G.S. § 15A-903(a)(1) or required to be provided to the State under G.S. § 15A-903(c). It is also a Class 1 misdemeanor to willfully omit or misrepresent evidence or information required to be disclosed pursuant to any other provision of G.S. § 15A-903. **This bill was supported by the North Carolina Sheriffs’ Association.**

Effective: March 31, 2011

HOUSE BILL 29, Retrieval of Big Game, amends G.S. § 113-291.1 to provide that if a hunter kills or wounds a big game animal during authorized hunting hours, the hunter may use a portable light source and a single dog on a leash to assist the hunter in retrieving the dead or wounded big game animal and may “dispatch” (i.e. kill) a wounded big game animal using only a .22-caliber rimfire pistol, archery equipment, or a handgun otherwise legal for that hunting season. Pursuit and retrieval of the wounded big game animal may occur between the hours of one-half hour after sunset and 11:00 p.m. if necessary, but such pursuit and retrieval may not be accomplished using a motorized vehicle.

Effective: October 1, 2011

HOUSE BILL 36, Employers & Local Government Must Use E-Verify, requires that employers with 25 or more employees and local governments after hiring an employee must verify the work authorization of the employee through E-Verify. The federal E-Verify program is currently operated by the United States Department of Homeland Security and verifies whether or not a person is authorized to work in the United States pursuant to federal law. This law does not apply with respect to a seasonal temporary employee who is employed for 90 or fewer days during a 12-consecutive-month period.

The employer must retain the E-Verify form for one year. The Commissioner of Labor investigates if there are complaints that the employer failed to use E-Verify and may request assistance of the SBI. If the Commissioner of Labor determines by investigation that the complaint is valid, a hearing must be held to determine if the employer failed to use E-Verify. If the Commissioner determines that the employer failed to verify an employee, the employer must file an affidavit with the Commissioner within three business days showing that the employer has verified the legality of the employee. Failure to file this affidavit can result in a civil penalty of up to \$10,000.

For the first violation of E-Verify requirements, the employer is not penalized. However, a civil penalty of \$1,000 for a second violation and a \$2,000 penalty for a third or subsequent violation are authorized. Each employee who is not verified is a separate violation.

Using the E-Verify system begins as follows:

- (1) October 1, 2011, cities and counties;
- (2) October 1, 2012, employers that employ 500 or more employees;
- (3) January 1, 2013, employers that employ 100 or more but less than 500 employees; and
- (4) July 1, 2013, employers that employ 25 or more but less than 100 employees.

Effective: October 1, 2011

HOUSE BILL 49, Laura's Law, is named for Laura Fortenberry, a 17 year old from Gaston County who was killed in a motor vehicle crash. The driver of the other vehicle, who was on probation for a previous driving while impaired (DWI) conviction, was charged with habitual DWI, second degree murder and two counts of serious injury by motor vehicle. On March 7, 2011, he pled guilty and received an active sentence of 21 to 28 years.

This bill creates a new Aggravated Level One punishment for drivers who are convicted of DWI and have three or more grossly aggravating factors. The grossly aggravating factors have not changed by this bill. They are:

- (1) Prior conviction of an offense involving impaired driving within seven years.
- (2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. § 20-28, and the revocation was an impaired driving revocation under G.S. § 20-28.2(a).
- (3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.
- (4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense. [Senate Bill 241 increased this age from 16 to 18 and added a person with the mental development of a child under the age of 18 years or a person with a physical disability preventing unaided exit from the vehicle.]

For an Aggravated Level One punishment the defendant may be fined up to \$10,000 and sentenced to a term of imprisonment of a minimum of 12 months up to a maximum of 36 months. The defendant is not eligible for parole but the prison term appears to be subject to reduction for good time/gain time under the policies of the Department of Correction (DOC). DOC must release the defendant from prison on post release supervision four months prior to the end of the maximum term of imprisonment. The defendant is to be supervised by the Division of Community Corrections. The defendant is required to abstain from alcohol consumption for the four-month period of supervision as verified by a continuous alcohol monitoring system (CAM). The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 120 days. If the defendant is placed on probation, the judge shall impose requirements that the defendant (i) abstain from alcohol consumption for a minimum of 120 days to a maximum of the term of probation, as verified by CAM and (ii) obtain a substance abuse assessment and the education or treatment required by G.S. § 20-17.6 for the restoration of a drivers license and as a condition of probation. A defendant sentenced at Aggravated Level One is required to have his driver's license permanently revoked. If the driver's license is reinstated at any time, the defendant must use an ignition interlock system.

The bill also removed the provision of G.S. § 20-179 that limited to 60 days the time that defendants convicted of a Level One or Level Two DWI could be required to abstain from alcohol consumption, as verified by a continuous alcohol monitoring (CAM) system. The new law provides that such a requirement may be imposed for the entire term of probation. The law also removes the provision limiting the total cost to the defendant for the CAM system to \$1,000. If a person arrested for an offense involving impaired driving has a prior conviction within the last seven years, the magistrate can order CAM as a condition of bond.

Finally, an additional \$100 court cost is imposed on any persons convicted of:

- (1) DWI;
- (2) DWI in a commercial motor vehicle (CMV);
- (3) a second or subsequent offense of operating a CMV after consuming alcohol; or
- (4) a second or subsequent offense of operating a school bus, school activity bus or child care vehicle after consuming alcohol.

Effective: December 1, 2011

HOUSE BILL 59, Sex Offenders Cannot Be EMS Personnel, amends G.S. § 131E-159 so that a person who is required to register as a sex offender may not be granted Emergency Medical Services credentials. If the person has credentials, they will not be renewed. **This bill was supported by the North Carolina Sheriffs' Association.**

Effective: April 12, 2011

HOUSE BILL 98, Breweries to Sell Malt Beverages on Premises, amends G.S. § 18B-1001(l) to allow a licensed brewery of malt beverages to obtain a permit authorizing on-premises malt beverage sales.

Effective: June 3, 2011

HOUSE BILL 113, Motorcycle Safety Act, states that if a driver makes an unsafe movement in violation of G.S. § 20-154(a) which causes a motorcycle operator (i) to change travel lanes or (ii) leave that portion of any street designated as travel lanes, the driver is responsible for an infraction and shall be fined not less than \$200. If the unsafe movement results in a crash causing property damage or personal injury to a motorcycle operator or passenger, the driver shall be responsible for an infraction and shall be assessed a fine of not less than \$500.

Effective: December 1, 2011

HOUSE BILL 159, Military Service Notation on Licenses, requires the Division of Motor Vehicles (DMV) to develop a military designation for driver's licenses and identification cards that may, upon request, be granted to North Carolina residents who are honorably discharged from military service in the United States Armed Forces. An applicant requesting this designation must produce a Form DD-214 showing the applicant has been honorably discharged from the United States Armed Forces. This designation is to be included on licenses or identification cards issued after DMV implements its Next Generation Secure Driver License System or July 1, 2012, whichever occurs first.

Effective: April 12, 2011

HOUSE BILL 212, Town of Cramerton/Regulate Utility Vehicles, allows the Town of Cramerton in Gaston County to pass an ordinance to regulate utility vehicles on streets within its town limits. A utility vehicle is designed and manufactured for general maintenance, security, recreational, and landscaping purposes, but does not include vehicles designed and used primarily for the transportation of persons or property on a street or highway. See G.S. § 20-4.01(48c).

Effective: June 17, 2011

HOUSE BILL 215, Unborn Victim of Violence Act/Ethen's Law, creates several new criminal offenses involving an unborn child. The bill is named after the unborn son of Jenna Nielsen, who was eight months pregnant when she was stabbed to death outside a Raleigh convenience store in 2007. An unborn child is defined as a member of the species homo sapiens, at any stage of development, who is carried in the womb.

The offenses involving an unborn child include both first and second degree murder, voluntary and involuntary manslaughter, assault inflicting serious bodily injury and misdemeanor battery. The punishments are similar to those same offenses when committed against someone other than an unborn person. Except for an offense involving the intentional killing of an unborn child,

knowledge that the victim was pregnant or a specific intent to harm the unborn child need not be proved. In other words, if the victim is pregnant, the defendant can be convicted of one of these offenses even if the defendant had no knowledge that the victim was pregnant.

This law repeals G.S. § 14-18.2 which made it a crime to injure a pregnant woman. The new law contains exceptions for medical procedures and for the acts of a pregnant woman which result in a miscarriage or a stillbirth. The bill also says that this act shall not be construed to impose criminal liability on an expectant mother who is the victim of acts of domestic violence which cause injury or death to her unborn child. The term "domestic violence" is defined in Chapter 50B of the General Statutes. **This bill was supported by the North Carolina Sheriffs' Association.**

Effective: December 1, 2011

HOUSE BILL 219, Sex Offender Registry Amendments, amends several statutes relating to name changes by offenders who are required to be on the sex offender registry. If a person required to register changes his or her name, then the person shall, within three business days, report in person to the sheriff of the county with whom the person registered to provide the name change information to the sheriff. The sheriff shall immediately forward this information to the Division of Criminal Information (DCI) of the SBI. DCI is required to maintain the system for public access so that a registrant's full name, any aliases, and any legal name changes are cross-referenced and a member of the public may conduct a search of the system for a registrant under any of those names.

The law changes the proper venue for a hearing on a petition for removal from the sex offender registry under G.S. § 14-208.12A from the district of residence to the district in which the person was convicted. If the person is required to register for an offense that occurred in another state, the proper venue is still the person's district of residence in North Carolina. **This bill was supported by the North Carolina Sheriffs' Association.**

Effective: December 1, 2011

HOUSE BILL 222, Electric Vehicle Incentives, allows plug in electric vehicles that have four wheels, operate on battery power, are manufactured to be operated on highways, meet National Highway Traffic Safety Administration standards included in 49 C.F.R. § 571 and have a top speed of at least 65 m.p.h. to be operated in the High Occupancy Vehicle lane with only one occupant. These vehicles are also exempt from emissions inspections. [Also see Senate Bill 194, Alternative Fuel Vehicle Incentives, for similar provisions concerning "natural gas vehicles and fuel cell electric vehicles."]

Effective: May 26, 2011

HOUSE BILL 227, Disturbing/Dismembering Human Remains, adds to the concealment of a death statute, G.S. § 14-401.22, subsections that make it a Class I felony to disturb, vandalize, or desecrate human remains by any means, including any physical alteration or manipulation of the human remains, or to commit upon any human remains any act of sexual penetration. This bill also makes it a Class H felony to attempt to conceal evidence of the death of another by dismembering or destroying human remains by any means, including removing body parts. If the human remains are from a person who did not die of natural causes, punishment is raised to a Class D felony.

Effective: December 1, 2011

HOUSE BILL 270, Amend Conditions of Probation, as amended by House Bill 335, retains the requirement that a person on supervised probation must remain “within the jurisdiction of the court” (which is generally interpreted to mean the entire state of North Carolina) unless granted written permission to leave by the court or his probation officer.

The bill also clarifies that a probationer must supply a breath, urine, or blood specimen for analysis of the possible presence of prohibited drugs or alcohol when instructed by the defendant's probation officer. If the results of the analysis are positive, the probationer must reimburse the Department of Correction for the actual screening and testing costs.

A special condition of probation may include not associating with a gang, wear clothes, jewelry, signs, symbols, or any paraphernalia readily identifiable as associated with or used by a street gang and participate in the Project Safe Neighborhood activities.

Finally, G.S. § 15A-1344(g) was repealed. Subsection (g) stated that if a probationer is charged with a new crime which could result in a revocation of his probation, the period of probation is tolled or stopped until the new charged is finally resolved. There will no longer be tolling of probation based upon the new charges. This means that a person on probation for a conviction and who is charged with a new crime will still be given credit toward completing his or her period of probation while the new charge is pending.

Effective: December 1, 2011

HOUSE BILL 271, Probation Officer/No Concealed Carry Required, adds off-duty probation officers to the list of persons in G.S. § 14-269(b) who may carry a concealed firearm in accordance with the provisions of this statute. This means that an off-duty probation officer can carry a concealed weapon without being required to obtain a concealed carry permit.

Effective: December 1, 2011

HOUSE BILL 280, County Law Enforcement Service District, modifies the requirements for a county to establish law enforcement service districts. It raises the population requirements for a county to qualify from 500,000 people to 900,000 people and requires that less than 10% of the population of the county be in an unincorporated area according to the most recent federal decennial census.

Effective: May 31, 2011

HOUSE BILL 289, Authorize Various Special Plates, allows numerous new specialized license plates for government and non-profit organizations. Specialized license plates for mayors, city council members, city clerks and retired legislators are included. The Division of Motor Vehicles (DMV) is required to develop, in consultation with the State Highway Patrol and the Department of Correction, a standardized format for special license plates. The format must allow for the license plate number to be easily read by the human eye and by cameras installed along roadways as part of tolling and speed enforcement. A designated segment of the plate is required to be set aside for a unique design representing various groups and interests. In addition, the Department of Crime Control and Public Safety and the Department of Transportation shall study whether, for purposes of effective law enforcement, full-color special license plates should continue to be authorized or be phased out, with all special license plates being on the First in Flight background. This study is to be presented to the Joint Legislative Transportation Oversight Committee by May, 2012.

Effective: June 30, 2011

HOUSE BILL 311, Household Goods Carriers/ID Markings, adds a new G.S. § 20-398 and requires motor carriers which move household goods for compensation to include their trade name and North Carolina number in at least three inch letters and figures on the motor vehicle and trailer prior to the vehicle being operated on a street or public vehicular area. If the carrier is engaged in interstate and intrastate moving, then the vehicle must be marked in accordance with federal regulations plus the North Carolina number must be displayed. A violation of this section is a Class 3 misdemeanor and punished by a fine of not more than \$500 for the first offense and not more than \$2,000 for any subsequent offense. In addition, the Utilities Commission may issue the company a civil fine of up to \$5,000. This law also makes it a Class 3 misdemeanor and subject to a fine by the Utilities Commission for anyone to represent that they have a certificate to operate as a household goods carrier when they do not.

Effective: October 1, 2011

HOUSE BILL 316, Modify NCGA Police Powers, expands the jurisdiction of the General Assembly Police throughout North Carolina when doing advance work, and:

- (1) While performing advance work for continuity of government planning and performing advance work and providing security for the protection of legislative members, staff, and the public for any meeting of a study, standing, select, or joint select committee, a caucus, or any committee or commission meeting of the General Assembly, or any state, regional, or national meetings of legislative bodies or organizations representing legislative bodies, and while accompanying a member of the General Assembly to or from any event listed in this subdivision.
- (2) While conducting a criminal investigation of a threat of physical violence against the General Assembly, a member or staff of the General Assembly, or their immediate family.
- (3) While accompanying a member of the General Assembly for the purpose of providing executive protection in response to a threat of physical violence.
- (4) While serving a subpoena issued by the General Assembly or any committee of the General Assembly authorized to issue a subpoena under the provisions of Chapter 120 of the General Statutes.

Effective: May 3, 2011

HOUSE BILL 331, Allow PAs and NPs to Sign Death Certificate, allows physician assistants and nurse practitioners, acting under the supervision of a physician who was treating the patient, to sign death certificates for any death not within the jurisdiction of the medical examiner.

Effective: October 1, 2011

HOUSE BILL 335, Prison Maintenance/Justice Reinvestment/Technical Corrections, allows licensed bondsmen access to search criminal records in the Administrative Office of the Courts' real-time criminal information systems.

Effective: When it becomes law, unless vetoed by Governor Perdue.

HOUSE BILL 336, Amend Weight Requirements-Certain Vehicles, exempts from the weight requirements of G.S. § 20-118(b) and (e) vehicles that are hauling unhardened ready-mixed concrete if the vehicles do not:

- (i) operate on an interstate highway or a posted light-traffic road;
- (ii) exceed any posted bridge weight limits;
- (iii) exceed a maximum gross weight of 66,000 pounds on a three-axle vehicle with a single-axle weight of no more than 22,000 pounds, a tandem-axle weight of no more than 46,000 pounds, with a length of at least 21 feet between the center of axle one and the center of axle three of the vehicle.

For purposes of this new law, no additional weight allowances as found in G.S. § 20-118 apply for the gross weight, single-axle weight, and tandem-axle weight. Also, the tolerance allowed by G.S. § 20-118(h) does not apply to vehicles exempted from the weight requirements under this new law.

Effective: October 1, 2011

HOUSE BILL 362, Pasquotank Hunting, makes it unlawful in Pasquotank County to hunt with a centerfire rifle unless the hunter is on a platform which raises the lower level of the barrel to a minimum of eight feet above ground level, except for a landowner lessee with a penalty of \$10 plus court costs. A violation is punishable as an infraction with a penalty of \$10 plus court costs.

It is also unlawful in Pasquotank and Edgecombe counties to hunt from any vessel in the Tar River from Springfield Road to the Dunbar Bridge, whether the vessel is under power or not, except that a vessel may be used for transportation of lawful hunters to and from otherwise lawful hunting stands. A violation is a Class 3 misdemeanor.

Effective: October 1, 2011

HOUSE BILL 381, Checking Station Pattern Selection, prohibits a checking station where officers stop only a particular type of motor vehicle, however a checking station limited to stopping only commercial motor vehicles is still allowed. This new law applies to checking stations established pursuant to G.S. § 20-16.3A and not to other lawful roadblocks or checking stations.

Note: This law prohibits a checking station intended to identify violations of Chapter 20 from being limited to only stopping a particular type of vehicle, other than commercial motor vehicles. In other words, a checking station for the purpose of stopping and checking drivers of motorcycles to determine helmets and license endorsements is prohibited. However, stopping all vehicles and observing the motorcycle driver and passenger for a legal helmet and checking the drivers license of the driver for the proper endorsement is not prohibited. Also, if there is a report that a suspect in a crime is operating a particular type of vehicle, e.g. motorcycle, black pickup truck, etc., then a checking station to check only drivers of that type of vehicle is not prohibited. That type of checking station is not established under G.S. § 20-16.3A.

Effective: December 1, 2011

HOUSE BILL 407, Modify ATV Helmet Use Requirements, amends G.S. § 20-171.19 which requires wearing eye protection and a safety helmet meeting United States Department of Transportation for all drivers when operating an all-terrain vehicle (ATV) on a public street or highway or public vehicular area. Prior to this amendment the law required this safety equipment for off road use of an ATV also.

The requirement of eye protection and a safety helmet for off road use of an ATV now only applies to operators under age 18. Operators who are age 18 or older are not required to wear eye protection or a safety helmet. There is one exception. If the person is less than 18 and

employed by a supplier of retail electric service, while engaged in power line inspection, the underage 18 employee may operate an all-terrain vehicle if wearing eye protection and a safety helmet required by Occupational Safety and Health Division of the North Carolina Department of Labor.

In addition, the eye wear and safety helmet requirements do not apply to a person age 16 or older when operating an ATV on a beach. G.S. § 20-171.22(c).

Effective: October 1, 2011

HOUSE BILL 408, Amend Criminal Discovery Laws, requires that law enforcement and investigatory agencies make available to the prosecutor's office, in a timely manner, a complete copy of the complete files related to the investigation of the crimes committed or the prosecution of the defendant for compliance with discovery statutes G.S. § 15A-902 and 15A-903.

This new law deletes the requirement that the prosecutor make a request for the law enforcement agency file. A law enforcement agency is required in every felony case and every other case within the original jurisdiction of the superior court to provide a complete copy of its complete file.

The law did not change the punishment for any person who willfully omits or misrepresents evidence or information required to be provided to the prosecutor's office. It is still a Class H felony.

Also, any person who willfully omits or misrepresents evidence or information required to be disclosed pursuant to any other provision of the discovery statute is guilty of a Class 1 misdemeanor. The new law places the responsibility on the law enforcement officers to timely provide to the prosecutor the complete law enforcement file in a felony case and every other case within the original jurisdiction of the superior court. Previously, the prosecutor was solely responsible to provide this information to the defendant, even if the officer failed to give it to the prosecutor. Now, law enforcement officers are responsible to provide the information to the prosecutor and if the officers do not, criminal charges can be brought against the officer. This new law makes accurate record keeping extremely important.

An "investigatory agency" is defined to include any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor's office in connection with the investigation of the crimes committed or the prosecution of the defendant.

The law does not require disclosure of the identity of any individual providing information about a crime or criminal conduct to a Crime Stoppers organization under assurance of anonymity, unless ordered by the court. The State is not required to disclose the Victim Impact Statement or its contents unless otherwise required by law.

When determining sanctions against the prosecutor for failing to disclose information on a timely basis, courts and State agencies are required to presume that prosecuting attorneys and their staffs have acted in good faith. This presumption only applies if they have made a reasonably diligent inquiry of law enforcement and investigatory agencies and disclosed the responsive materials.

The amendments made by this bill are in addition to those made by House Bill 27 discussed above.

Effective: December 1, 2011

HOUSE BILL 411, Iredell Correctional Facility/DOT Storage, provides that DOT shall lease to the Iredell County Sheriff the buildings requested by the Sheriff of Iredell County at the former Iredell Correctional Facility located on NC Highway 21 for the sum of \$1 a year for 30 years. The Iredell County Sheriff's Office shall pay to the DOT the sum of \$75,000 to be used by the DOT to renovate the DOT's facility in Newton. The Sheriff of Iredell County shall use the facilities for housing inmates and shall be responsible for all upgrades and services at the buildings leased by the Sheriff of Iredell County to ensure compliance with the State and federal laws regarding inmate care and custody.

Effective: June 27, 2011

HOUSE BILL 427, Run and You're Done, requires that when a defendant is charged with felony speeding to elude arrest, the vehicle the defendant is driving is to be seized and delivered to the sheriff of the county in which the offense is committed. If delivery or actual possession is impractical, the vehicle shall be placed under the sheriff's constructive possession. The vehicle shall be held by the sheriff pending the trial of the defendant.

The sheriff shall return the seized motor vehicle to the owner upon execution by the owner of a good and valid bond, with sufficient sureties, in an amount double the value of the property and the bond shall be conditioned on the return of the motor vehicle to the custody of the sheriff on the day of trial of the person accused. Upon an acquittal or dismissal of the felony speeding to elude arrest charge, the sheriff shall return the motor vehicle to the owner. A lien holder may petition the court for return of the seized vehicle. The court, in its discretion may allow reclamation of the vehicle by the lien holder. The lien holder shall file with the court an accounting of the proceeds of any subsequent sale of the vehicle and pay into the court any proceeds received in excess of the amount of the lien.

A non-defendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the petitioner is an innocent owner. The law does not define who is an innocent owner. The clerk shall make a determination as soon as feasible. If the clerk determines that the petitioner is an innocent owner, the clerk shall release the motor vehicle to the petitioner. The clerk shall send a copy of the order authorizing or denying release of the vehicle to the district attorney and the sheriff. If the clerk determines that the vehicle should not be released, the petitioner may seek reconsideration by the court as part of the forfeiture hearing.

Upon conviction of the defendant for felony speeding to elude arrest, the court shall order that the vehicle to be sold at public auction. However, the court shall not order a sale of the vehicle but shall return it to the owner if the owner shows:

- a. The defendant was an immediate member of the owner's family at the time of the offense.
- b. The defendant had no previous felony or misdemeanor convictions at the time of the offense and had no previous or pending violations of any provision in Chapter 20 of the General Statutes for the three years previous to the time of the offense.
- c. The defendant was under the age of 19 at the time of the offense.

The owner shall be entitled to a trial by jury upon these issues.

When any vehicle seized is found to be specially equipped or modified from its original manufactured condition so as to increase its speed, the court shall, prior to sale, order that the special equipment or modification be removed and destroyed or that the vehicle be turned over to a governmental agency or public official to be used in the performance of official duties only, and not for resale, transfer, or disposition other than as junk.

If the vehicle is sold, after deducting the expenses of keeping the motor vehicle, the fee for the seizure and the costs of the sale, the person conducting the sale, usually the sheriff, shall pay all valid liens. Any balance remaining shall be paid to the school fund of the county. **This bill was supported by the North Carolina Sheriffs' Association.**

Note: This law is similar to seizures of vehicles allowed for larceny and similar crimes under G.S. § 14-86.1 (Seizure and forfeiture of conveyances used in committing larceny and similar crimes), felony drug crimes, G.S. § 90-112 (Forfeitures), and vehicles used for prearranged racing, G.S. § 20-141.3 (Unlawful racing on streets and highways). Both this law and G.S. § 20-28.2 may apply. G.S. § 20-28.2 applies to the driver who is charged with felony speeding to elude arrest and who is also driving while impaired and with a revoked license or driving while impaired and without a license and without liability insurance. The officer will have his or her choice of which statute to use. Check with your department on which statute and procedure to use. If the new law is used, then the sheriff is responsible for the safe keeping of the vehicle. If G.S. § 20-28.2 is used, then the statewide contractor hired by the Department of Public Instruction is responsible. It will be less work for the sheriff's office if G.S. § 20-28.2 procedures are used.

Effective: December 1, 2011

HOUSE BILL 432, Swine in Transport/Regulate Feral Swine, effective October 1, 2012 makes a person subject to a \$5,000 civil penalty from the Department of Agriculture for transporting live swine without identification issued by the Department of Agriculture. Also, effective October 1, 2012, misuse of swine identification can result in a \$1,000 civil fine.

The designation of "Wild Boar" in the wildlife statutes is changed to feral swine. It is a Class 2 misdemeanor to remove feral swine from a trap while the swine is still alive or to transport the live swine after that removal. The Wildlife Resources Commission may adopt rules prescribing seasons and the manner of taking of wild animals and wild birds with the use of artificial light and electronic calls.

Effective: October 1, 2011

HOUSE BILL 468, Amend Weight Limits for Farm Products, exempts from weight limits a vehicle hauling live poultry from the farm where the live poultry is raised to any processing facility within 150 miles of that farm.

Effective: December 1, 2011

HOUSE BILL 538, LGERS LEO Disability, allows a law enforcement officer to receive disability retirement benefits if the officer becomes incapacitated for duty as the natural and proximate result of injuries incurred while in the actual performance of his or her duties, and meets all other requirements for disability retirement benefits. Previously this benefit was not

available to officers during their first year of service. This bill removed the one year of service requirement. **This bill was supported by the North Carolina Sheriffs' Association.**
Effective: July 1, 2011

HOUSE BILL 629, Substance Abuse Treatment, amends G.S. § 15A-1343 to provide that when a defendant is ordered to receive medical or psychiatric treatment and remain in a specified institution as a condition of probation, the defendant may be required to participate in such treatment for the duration of the treatment regardless of the length of the suspended sentence imposed.

Effective: December 1, 2011

HOUSE BILL 641, Certificate of Relief Act, establishes a procedure whereby certain convicted felons and misdemeanants who are ineligible for expunction of their criminal record but have complied with all requirements of their sentence are able to obtain from the court a certificate relieving them of some of the collateral consequences of the conviction.

Collateral consequences include being ineligible for certain jobs, licenses required for employment or admission to schools or training programs. G.S. § 15A-173.1.

The bill also provides a defense to civil liability from a lawsuit based upon a lack of due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual. In other words, if the employee or student had a Certificate of Relief and then injured someone, the employer or school cannot be held civilly liable for improper hiring or retention based upon the employee's or student's criminal record if the person against whom the suit is brought knew of the Certificate of Relief.

An individual who is convicted of no more than two Class G, H, or I felonies or misdemeanors in one session of court, and who has no other convictions for a felony or misdemeanor other than a traffic violation, may petition the court where the individual was convicted for a Certificate of Relief. The court must hold a hearing where the district attorney can appear and the crime victim can submit information. The court can request an investigation by a probation officer. In order to issue a Certificate of Relief, the court must find:

- (1) Twelve months have passed since the individual has completed his or her sentence, including active time, probation, and post-release supervision.
- (2) The individual is seeking or engaged in a lawful occupation or activity, including employment, training, education, or rehabilitative programs, or the individual otherwise has a lawful source of support.
- (3) The individual has complied with all requirements of the individual's sentence, including any terms of probation, that may include substance abuse treatment, anger management, and educational requirements.
- (4) The individual is not in violation of the terms of any criminal sentence, or that any failure to comply is justified, excused, involuntary, or insubstantial.
- (5) A criminal charge is not pending against the individual.
- (6) Granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.

The court can grant part of all of the relief requested.

The Certificate of Relief does not allow the court to relieve the defendant from:

- (1) Registration as a sex offender.
- (2) Prohibitions on possession of firearms imposed by Chapter 14 of the General Statutes.
- (3) License suspension under Chapter 20.
- (4) Ineligibility for certification as a criminal justice officer or deputy sheriff pursuant to Chapters 17C or 17E.
- (5) Ineligibility for employment as any of the following if the ineligibility is a sanction imposed by North Carolina law.
 - a. A corrections or probation officer.
 - b. A prosecutor or investigator in either the Department of Justice or in the office of a district attorney.

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

Effective: December 1, 2011

HOUSE BILL 642, Justice Reinvestment Act, as amended by House Bill 335, makes numerous changes to conditions of probation including electronic house arrest, periods of confinement, community service, substance abuse treatment and monitoring, and satellite based monitoring for sex offenders. It grants increased authority to probation officers to impose sanctions for violations of the terms of probation short of requesting that the court activate a suspended sentence and send the person to prison.

The probation officer is authorized to impose sanctions without going to court. These sanctions include imposing a curfew with electronic monitoring on the probationer or mandating the probationer participate in education or vocational skills training. The probation officer may also impose a "Quick Dip." A "Quick Dip" allows a probation officer to place an offender in a local confinement facility for a two or three day overnight stay. The "Quick Dip" may not exceed more than 6 days total for one month during any three separate months of the period of probation. This "Quick Dip" can be used for probationers placed on probation for offenses that occur on or after December 1, 2011. When a defendant is on probation for multiple judgments, confinement for a "Quick Dip" shall run concurrently and therefore still may total no more than six days per month.

The Department of Correction (DOC) is to develop a validated risk assessment tool to identify a probationer's risk of re-offending and an appropriate level of supervision. The law sets a goal of a probation officer having no more than 60 probationers who have been assessed as having either a high or moderate risk of re-arrest.

When a defendant has violated a condition of probation other than by committing a new crime or absconding, the court may impose a 90-day period of confinement for a defendant under supervision for a felony conviction or a period of confinement of up to 90 days for a defendant under supervision for a misdemeanor conviction. The court may not revoke probation unless the defendant has previously received a total of two periods of confinement under this subsection. A defendant may receive only two periods of confinement under this subsection. If the time remaining on the defendant's maximum imposed sentence is 90 days or less, then the term of confinement is for the remaining period of the sentence. Confinement under this section shall be

credited to the prison term that was imposed. A defendant shall serve any confinement under these provisions in the correctional facility (DOC or county jail) where the defendant would have served an active sentence.

Effective December 1, 2011, post-release supervision (similar to parole) is increased from nine to 12 months for Class B1-E felonies and a nine-month period is established for the first time for Class F - I felonies. Sex offenders' post-release supervision period is 60 months. The bill increases the felony sentence authorized by three months to account for the increased post release supervision requirements.

The bill amends the habitual felon law to make it a four-class sentence enhancement (capped at Class C), a change from the current law under which all habitual felons are sentenced as Class C felonies.

The bill also creates the status offense of felony habitual breaking and entering. A defendant who is charged with a breaking and entering offense listed in the new G.S. § 14-7.25, which includes first and second degree burglary and felony breaking and entering, who has one or more previous convictions for a felony breaking and entering offense, can be determined to be a habitual breaking and entering status offender. If so, the defendant is sentenced as a Class E felony.

For persons who enter a plea of guilty or are convicted on or after January 1, 2012, the bill allows all first offenders who committed a misdemeanor possession offense in violation of the controlled substance laws or felony possession of a controlled substance, to be placed in the controlled substance diversion program. Previously the law was discretionary and limited to misdemeanants and felony drug offenders who possessed less than one gram of cocaine. The bill creates a new "advanced supervised release" program, allowing certain felons to be released from prison early upon completing risk reduction incentive programs in the DOC. The early release is only permissible with the approval of the prosecutor and the sentencing judge. The bill repeals the Criminal Justice Partnership Program and replaces it with the Treatment for Effective Community Supervision Act of 2011. This Act places an emphasis on drug related offenders and allows the DOC to contract with local agencies to provide services for probationers. It sets a goal of reducing revocations among people on probation and post-release supervision by 20% from the rate in the 2009-2010 fiscal year. There is established a State Community Correction Advisory Board to review the effectiveness of local programs and report to the General Assembly. Of the 21 members of this Board, the Governor must appoint one sheriff and one chief of police to this Board.

Effective January 1, 2012, this bill allows for defendants convicted of misdemeanors and sentenced to more than 90 days and up to 180 days to serve their time in a county jail. Defendants convicted of felonies and sentenced to active prison time or misdemeanants with a sentence of more than 180 days must serve their sentence in DOC. The bill requires the DOC to enter into voluntary agreements with counties to provide housing for misdemeanants serving periods of confinement of more than 90 days and up to 180 days, except for those serving a sentence for an impaired driving offense, who are imprisoned under the rules set out in G.S. § 20-176(c1).

DOC is to contract with the North Carolina Sheriffs' Association, Inc., to provide a service that identifies space in local confinement facilities that is available for housing these misdemeanants.

The cost of housing and caring for these misdemeanants, including, but not limited to, care, supervision, transportation, medical, and any other related costs, are to be covered by State funds and not be imposed as a local cost. A Statewide Misdemeanant Confinement Fund is established in G.S. § 148-10.4 to be used to provide funding to cover the costs of managing this system for providing housing of misdemeanants in local confinement facilities as well as reimbursing the counties for housing and related expenses for those misdemeanants. House Bill 200, section 31.26(b) & (c) outlined in the Budget Section above provides the financial backing for the Fund by increasing court costs in district court. A contract between DOC and the Sheriffs' Association must be signed by November 1, 2011 and the program must be in operation on a statewide basis by January 1, 2012. **This bill was supported by the North Carolina Sheriffs' Association.**
Effective: June 23, 2011

HOUSE BILL 649, Amend Grounds/License Revocation/Bail Bondsman, provides that if the amount of bail is reduced, the surety is not required to return any part of the premium. This bill also gives the Commissioner of Insurance more authority to revoke the license of a bondsman for various reasons including incompetence, financial irresponsibility, dishonesty, forgery, failure to pay child support and failure to pay taxes. It also makes changes in the bond forfeiture procedures.
Effective: December 1, 2011

HOUSE BILL 650, Amend Various Gun Laws/Castle Doctrine.

Defense of Home, Workplace and Motor Vehicle

This legislation modifies the common law "Castle Doctrine" or "Defense of Habitation Doctrine" which authorizes use of deadly force against intruders and makes several gun law changes. The new Castle Doctrine, G.S. § 14-51.2, applies to a home which is defined as a building or conveyance of any kind, to include its curtilage, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed as a temporary or permanent residence. It also applies to a motor vehicle and a workplace. Workplace is defined as a building or conveyance of any kind, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, which is being used for commercial purposes.

The law creates a presumption that a lawful occupant of a home, motor vehicle or workplace held a reasonable fear of imminent death or serious bodily harm to himself, herself, or another when using force likely to cause death or serious injury if:

- (1) The person against whom the defensive force was used;
 - (a) was in the process of unlawfully and forcefully entering,
 - (b) had unlawfully and forcibly entered, a home, motor vehicle, or workplace, or
 - (c) if that person had removed or was attempting to remove another person against that person's will from the home, motor vehicle, or workplace;

and

- (2) the person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

This presumption of lawful use of deadly force does NOT apply when:

- (a) The person against whom the defensive force is used has the right to be in or is a lawful resident of the home, motor vehicle, or workplace, and there is no written injunction or no contact order.
- (b) The person sought to be removed from the home, motor vehicle, or workplace is a child or grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the defensive force is used.
- (c) The person who uses defensive force is engaged in, attempting to escape from, or using the home, motor vehicle, or workplace to further any criminal offense that involves the use or threat of physical force or violence against any individual.
- (d) The person against whom the defensive force is used is a law enforcement officer or bail bondsman in the lawful performance of his or her official duties, and the officer or bail bondsman identified himself or herself or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer or bail bondsman.
- (e) The person against whom the defensive force is used (i) has discontinued all efforts to unlawfully and forcefully enter the home, motor vehicle, or workplace and (ii) has exited the home, motor vehicle, or workplace.

If the presumption applies, then the person is immune from civil or criminal liability for the use of force against anyone except a law enforcement officer or bail bondsman in the performance of their duties.

The law presumes that a person who unlawfully and by force enters or attempts to enter a person's home, motor vehicle, or workplace is doing so with the intent to commit an unlawful act involving force or violence. The lawful occupant is not required to retreat prior to using deadly force.

Defense of Self or Others

The new law also modifies the rules of self-defense and defense of others. Persons are immune from civil and criminal liability for using non-deadly force when and to the extent that the person reasonably believes that the conduct is necessary to defend themselves or another against the other's imminent use of unlawful force. Deadly force can be used and they do not have a duty to retreat if they reasonably believe that such force is necessary to prevent imminent death or great bodily harm to themselves or another or under the circumstances is permitted pursuant to the new Castle Doctrine outlined in G.S. § 14-51.2 discussed above. If force is used in accordance with this new law the person is protected from civil or criminal liability unless the force is used against a law enforcement officer or bail bondsman.

The protection from civil and criminal liability is not available to a person who is committing or escaping from committing a crime or who provokes the use of force.

The previous statute, G.S. § 14-51.1, Use of Deadly Physical Force Against an Intruder, is repealed.

Carrying Concealed Weapons Law Changes

G.S. § 14-269, is amended to provide that the following persons are exempt and therefore may carry concealed weapons:

- (1) District attorneys, assistant district attorneys and district attorney investigators if they have a concealed carry permit. While this change will also permit them to carry concealed weapons in courthouses, they are specifically prohibited from carrying a concealed weapon in courtrooms. They are also specifically prohibited from carrying concealed weapons while consuming alcohol or while alcohol or a controlled substance remains in the person's body. Additionally, the weapon must be secured in a locked compartment when the weapon is not on the person of the district attorney, assistant district attorney or district attorney investigator.
- (2) Qualified retired law enforcement officers with concealed carry permits certified by the North Carolina Criminal Justice Education and Training Standards Commission.
- (3) Detention personnel or correctional officers employed by the State or a unit of local government who park a vehicle in a space that is authorized for their use in the course of their duties are authorized to transport a firearm to the parking space and store that firearm in the vehicle parked in the parking space, provided that:
 - (i) The firearm is in a closed compartment or container within the locked vehicle, or
 - (ii) The firearm is in a locked container securely affixed to the vehicle.

Various other changes were made to the concealed carry laws, to include:

- (1) Persons with concealed carry permits do not violate G.S. § 14-269.4 (carrying a deadly weapon onto State property) if the weapon is a firearm, the person has a concealed carry permit and the firearm is locked in a compartment of a locked vehicle.
- (2) In order to violate G.S. § 14-269.2(b) a person must "knowingly" possess or carry a firearm (open or concealed) on school property or at a school-sponsored event, and a minor must "willfully and intentionally" possess a firearm to violate G.S. § 14-269.7.
- (3) G.S. § 14-269.8 was amended to delete the prohibition that a person subject to a domestic violence order not "own" a firearm. The person may not possess, purchase or receive a firearm but the person is not required to sell or give away firearms that the person owns.
- (4) A person with a concealed carry permit may carry a concealed handgun on the grounds or waters of State parks.

- (5) Failing to carry the concealed carry permit or to notify a law enforcement officer of the concealed weapon in violation of G.S. § 14-415.21 is an infraction for the first and all subsequent offenses. A second offense was a Class 2 misdemeanor until this amendment.
- (6) A sheriff must either issue or deny a gun permit within 45 days (was, 90 days) but the 45 day time restriction only applies if all records have been received including mental health records.
- (7) People can purchase a gun in another state as long as they undergo a background check for that state, including an inquiry of the National Instant Background Check System.
- (8) A local government may adopt an ordinance to permit the posting of a prohibition against carrying a concealed handgun, in accordance with G.S. § 14-415.11(c), on local government buildings and their appurtenant premises.
- (9) A local government may adopt an ordinance to prohibit, by posting, the carrying of a concealed handgun on municipal and county recreational facilities that are specifically identified by the local government. If a local government adopts such an ordinance with regard to recreational facilities, then the concealed handgun permittee may, nevertheless, secure the handgun in a locked vehicle within the trunk, glove box, or other enclosed compartment or area within or on the motor vehicle. For purposes of this section, the term "recreational facilities" includes only the following: a playground, an athletic field, a swimming pool, and an athletic facility."
- (10) All concealed weapon permits issued by another state are valid in North Carolina.

Other Firearms Law Changes

Unless otherwise prohibited by law, a citizen of this State may purchase a firearm in another state if the citizen undergoes a background check that satisfies the law of the state of purchase and that includes an inquiry of the National Instant Background Check System.

A new statute, G.S. § 14-408.1 makes it a Class F felony to knowingly solicit, persuade, encourage, or entice a licensed firearms dealer or private seller of firearms or ammunition to transfer a firearm or ammunition under circumstances that the person knows would violate the laws of this State or the United States or to give false or misleading information to a gun dealer or private seller.

The law provides that persons can lawfully possess or own a weapon as defined in G.S. § 14-288.8(c) (weapons of mass death and destruction) and G.S. § 14-409 (machine guns) when they are in compliance with 26 U.S.C. Chapter 53, §§ 5801-5871. However, nothing in this new law limits the discretion of the sheriff to decline to sign the paperwork required by the United States Bureau of Alcohol, Tobacco, Firearms and Explosives in order for such persons to obtain these weapons.

Effective: December 1, 2011

HOUSE BILL 661, CDL/HAZMAT Endorsement Expiration, provides that a commercial drivers license which contains an ‘H’ or ‘X’ endorsement shall expire on the date of expiration of the licensee's security threat assessment conducted by the Transportation Security Administration of the United States Department of Homeland Security. The ‘H’ and ‘X’ endorsements on a commercial drivers license shall expire when the commercial drivers license expires. The license shall be renewed every five years or less.

When the commercial driver’s license also contains an ‘S’ endorsement and the licensee is certified to drive a school bus in this State, the commercial driver’s license shall expire on the birth date of the licensee three years after the date of issuance.

Effective: July 1, 2012

HOUSE BILL 662, Electronic Monitoring Fee, allows a county that provides the personnel, equipment, and other costs of providing electronic monitoring as a condition of an offender's bond or pretrial release to collect a fee from the offender that is the lesser of the amount of the jail fee authorized in § 7A-313 or the actual cost of providing the electronic monitoring. House Bill 200, Section 31.26(e) raised the daily jail fee from \$5 to \$10 for each 24 hours, effective August 1, 2011. A county may not collect a fee from an offender who is found to be indigent and entitled to court-appointed counsel.

Effective: July 1, 2011

HOUSE BILL 678, Pilot Release of Inmates to Adult Care Homes, allows for the Department of Health and Human Services (DHHS) and the Department of Correction (DOC) to establish a pilot program whereby inmates who are permanently disabled or terminally ill and who need personal care services and medication management may be placed in an adult care home. The purpose of the pilot program is to determine if placing this population of released inmates in an adult care home provides the State with a lower cost alternative without jeopardizing the health and safety of the inmates or the public. DHHS shall select one adult care home to participate in the pilot program. The selected adult care home is prohibited from having or admitting any residents other than the inmates selected to participate in the pilot program. DHHS and DOC are to report back their findings and recommendations to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

Effective: June 28, 2011

HOUSE BILL 755, Study Fox Laws, requires the Wildlife Resources Commission to undertake a study of fox and coyote populations in the State and recommend management methods and controls designed to ensure statewide conservation of fox populations while managing adverse effects of coyote populations. The study is to be completed by April 1, 2012, and a report, including any proposed legislation, is to be submitted to the General Assembly.

Effective: June 27, 2011

HOUSE BILL 761, Ignition Interlock Systems/Record Checks, enacts G.S. § 20-17.8A which makes it a Class 1 misdemeanor for any person to tamper with, circumvent, or attempt to circumvent an ignition interlock device or alter the testing results received on the ignition interlock device. This applies only if the ignition interlock was required to be installed on a motor vehicle pursuant to judicial order, statute, or “as may be otherwise required as a condition for an individual to operate a motor vehicle.”

In this bill G.S. § 20-30 was amended make it unlawful to display revoked licenses or identification cards, counterfeit special identification cards, to obtain one with a false name, to make color copies, to reproduce, or to sell special identification cards.

The Department of Justice is authorized to use the person's fingerprints to provide the Division of Motor Vehicles the state and national criminal history records of any applicant for restoration of a revoked driver's license. The applicant may be charged a fee for this service.

Effective: December 1, 2011

HOUSE BILL 762, Landowner Protection Act, clarifies the requirements for posting property to prohibit hunting or fishing without permission. The bill adds to G.S. § 14-159.7 a second method of posting property. Under the first method, the landowner may place notices, signs, or posters on the property. The notices, signs or posters shall measure not less than 120 square inches and must be conspicuously posted on private lands not more than 200 yards apart close to and along the boundaries. At least one such notice, sign, or poster shall be posted on each side of such land, and one at each corner thereof, provided that the corner can be reasonably determined.

The second method provided by this new law allows the landowner, in lieu of no trespassing signs, to place identifying purple paint marks on trees or posts around the area to be posted. Each paint mark shall be a vertical line of at least eight inches in length, and the bottom of the mark shall be no less than three feet nor more than five feet from the base of the tree or post. The paint marks shall be placed no more than 100 yards apart and shall be readily visible to any person approaching the property. For the purpose of prohibiting fishing, or the taking of fish by any means, in any stream, lake, or pond, it shall only be necessary that the paint marks be placed along the stream or shoreline of a pond or lake at intervals of not more than 100 yards apart.

A person who has permission to hunt or fish must have the written permission with them signed by the landowner, lessee, or agent, and dated within the last 12 months. If permission is given to a hunt club, the person must have a copy of the hunt club's permission and their own current membership card from the club. The written permission must be displayed upon request of any law enforcement officer.

Effective: October 1, 2011

HOUSE BILL 805, Additional Name Change Requirements, adds a new requirement when a person requests a name change. A person who desires to change his or her true name may apply to the clerk of superior court of the county where the person resides and must submit the following information to the clerk:

- (1) The applicant's true name, county of birth, date of birth, the full name of parents as shown on birth certificate, and the name sought to be adopted.
- (2) The certified results of an official state and national criminal history records check.
- (3) A sworn statement as to the following:
 - a. That the applicant is a bona fide resident of, and domiciled in, the county where the change of name is sought.
 - b. Whether or not the applicant has outstanding tax or child support obligations.

The person must be fingerprinted and the fingerprints must be submitted for a criminal history records check. If the clerk finds "good and sufficient reason" to grant the name change, the clerk enters the order and sends a copy to the State Registrar of Vital Statistics and a copy to the Division of Criminal Information at the State Bureau of Investigation. If the clerk does not find sufficient reason, the person may appeal to the chief resident superior court judge. **This bill was supported by the North Carolina Sheriffs' Association.**

Effective: June 24, 2011

HOUSE BILL 895, Butner Fire & Police District Modifications, establishes the Butner Public Safety Authority to provide fire and law enforcement protection for the territory of the Camp Butner Reservation. Previously, fire and law enforcement protection were provided in Butner by the Department of Crime Control and Public Safety (DCC&PS). The Authority has seven members, three appointed by the Town of Butner, three appointed by the Secretary of Crime Control and Public Safety (CC&PS), and one appointed by the Granville County Board of Commissioners.

The Authority shall contract with the Secretary of CC&PS to provide fire and law enforcement protection to the Camp Butner Reservation and within the corporate limits of the Town of Butner so long as the DCC&PS provides the level of services required by the Authority.

Effective: June 23, 2011

HOUSE BILL 927, State Pension Plan Solvency Reform Act, requires a person intending to retire to notify the retirement system at least 120 days prior to retiring (previously 90 days) to assure that the person receives a timely retirement check.

For all law enforcement officers (LEO) who become members of the State retirement system on or after August 1, 2011, the bill raises: (1) from 10 years to 15 years of credible service as a LEO that the officer must have to retire with an early reduced benefit at age 50; and (2) from five years to 10 years of credible service as a LEO that the officer must have to retire on an unreduced retirement allowance upon attaining the age of 55 years.

For all non-LEO persons who become members of the State retirement system on or after August 1, 2011, the bill raises from five years to 10 years of membership in the retirement system that the person must have to retire at age 60 without penalty.

LEOs employed on or after August 1, 2011 will be entitled to receive the Special Separation Allowance if the LEO has 30 years of service, or is age 55 with 10 years (formerly, was 5 years) of service as a LEO with at least 10 years (formerly, was 5 years) of continuous service as a law enforcement officer immediately preceding a service retirement.

Beginning December 1, 2011, it is a Class 1 misdemeanor if a person, with the intent to defraud, receives money as a result of cashing, depositing, or receiving a direct deposit of a decedent's retirement allowance from any State retirement program and the person (i) knows that he or she is not entitled to the decedent's retirement allowance, (ii) receives the benefit at least two months after the date of the retiree's death, and (iii) does not attempt to inform the Retirement System of the retiree's death.

Effective: August 1, 2011

SENATE BILLS

SENATE BILL 7, Add Controlled Substances, adds to the controlled substance laws (1) mephedrone, a substance found in plant food and bath salts that's used as a recreational drug in the nightclub scene because of its hallucinogenic effects, (2) MDPV, also known as Serenity, Cloud 9 or Ivory Wave and packaged as bath salt, and (3) synthetic marijuana, including Spice and K2, which is a mix of herbs and spices that are sprayed with a chemical compound similar to the psychoactive ingredient in marijuana. The laws include punishment levels for trafficking in these drugs. **This bill was supported by the North Carolina Sheriffs' Association.**

Effective: June 1, 2011

SENATE BILL 16, Obtain Blood Sample/Implied-Consent Laws, amends the definition of implied consent offense to include misdemeanor death by vehicle. This means in any motor vehicle crash where a person is killed as a result of a violation of the motor vehicle law, the at-fault driver must submit to a chemical analysis of the breath and/or blood. If a person is charged with causing a death of another pursuant to G.S. § 20-141.4 (felony and misdemeanor death by vehicle), the charging officer is required to obtain a blood sample unless the driver submits to a breath test which shows an alcohol concentration of 0.08 or more. If a person willfully refuses to provide a blood sample under this subsection, and the person is charged with a violation of G.S. § 20-141.4 (felony and misdemeanor death by vehicle), then a law enforcement officer with probable cause to believe that the offense involved impaired driving or was an alcohol-related offense made subject to the procedures of G.S. § 20-16.2 (Implied consent to chemical analysis) shall seek a warrant to obtain a blood sample. The failure to obtain a blood sample pursuant to this subsection shall not be grounds for the dismissal of a charge and is not an appealable issue.

Effective: December 1, 2011

SENATE BILL 31, Clarify Penalty Unauthorized Practice of Medicine, says that any person who practices medicine without being duly licensed and registered in this State shall be guilty of a Class 1 misdemeanor. Any person practicing medicine without being duly licensed and registered in this State and who is falsely representing himself or herself in a manner as being licensed shall be guilty of a Class I felony. Any person practicing medicine without being duly licensed and registered in this State and who is an out-of-state practitioner is guilty of a Class I felony. Any person who has a license that is inactive due solely to the failure to complete annual registration in a timely fashion or any person who is licensed, registered, and practicing under any other Article of Chapter 90 is guilty of a Class 1 misdemeanor.

Effective: December 1, 2011

SENATE BILL 46, Surry Fox and Coyote Taking Season, provides for an open season with no bag limit for taking foxes and coyotes with lawful weapons or traps from October 15 through March 1. This law applies to Surry and Alleghany counties.

Effective: April 7, 2011

SENATE BILL 49, Increase Fine for Speeding/School Zone, raises the penalty for speeding in a school zone, G.S. § 20-141.1, or on school property, G.S. § 20-141(e1), from not less than \$25 to exactly \$250.

Effective: August 25, 2011

SENATE BILL 68, Robeson Hunting and Fishing, adds Robeson County to the list of counties where it is illegal to hunt or fish on the property of another without written permission.

Effective: October 1, 2011

SENATE BILL 98, 911 Call Transcript, provides that to protect the identity of the complaining witness, when responding to a “public records” request, the contents of "911" and other emergency telephone calls may be released in the form of a written transcript or altered voice reproduction. However, if so ordered, the original recording shall be used as evidence in any relevant civil or criminal proceeding. **This bill was supported by the North Carolina Sheriffs' Association.**

Effective: June 27, 2011

SENATE BILL 131, Administrative Office of the Courts (AOC) Collection Assistance Fee, allows AOC to contract with collection agencies to collect monies due to the courts from persons on unsupervised probation. This bill allows AOC to pay the agency a collection assistance fee. The amount of the collection assistance fee shall not exceed the average cost of collecting the debt or twenty percent (20%) of the amount past due at least 30 days, whichever is less. It now allows the \$20 fee and can be imposed on everyone who wants to pay the court fees or costs on an installment basis.

Effective: July 1, 2011

SENATE BILL 135, Allow Juvenile Record/Risk Determination/Bond, provides that for a defendant involved in pretrial release, plea negotiating decisions, and plea acceptance decisions for a Class A1 misdemeanor or a felony occurring when the defendant was less than 21 years of age, the defendant's juvenile record of an adjudication of delinquency may be considered by the court. The adjudication of delinquency must be for an offense that would be a Class A1 misdemeanor or a felony if committed by an adult and it must have occurred after the defendant was 13 years old.

Effective: December 1, 2011

SENATE BILL 143, Detention Facility Requirements, allows for counties with a population in excess of 300,000 (previously in excess of 600,000), to house up to 64 inmates (previously 56 inmates) in each dormitory in a county detention facility. The square footage, number of showers and other requirements of G.S. § 153A-221(d) were not changed.

This bill also states that persons in the custody of or under the supervision of the Department of Correction (DOC) and persons in the custody of local confinement facilities are not entitled to access the public record parts of a State employee's personnel file under G.S. § 126-23, absent a court order authorizing access to, custody, or possession of the records. The General Assembly found that allowing inmates, probationers, parolees, and post-release supervisees to access public employees' personnel files that are public records under State law exposes those public employees to the risk of harassment and even violence. An attorney investigating allegations of unlawful misconduct or abuse by a DOC employee may request, and could be provided with, information sufficient to identify the full name or names of the employee alleged to be involved in the misconduct or abuse, their current or last positions and the last date of employment by the DOC. The attorney may not give the offender copies of departmental records or official documents absent a court order authorizing access to, custody, or possession.

Effective: June 27, 2011

SENATE BILL 144, Cash Converters Must Keep Purchase Records, adds “cash converters” to the Pawnbrokers Act. A "cash converter" is a person engaged in the business of purchasing

goods from the public for cash at a permanently located retail store who holds himself or herself out to the public by signs, advertising, or other methods as engaging in that business. Cash converters do not include:

- (1) pawnbrokers.
- (2) precious metal dealers.
- (3) purchases from manufacturers or wholesalers.
- (4) purchases by persons primarily in the business of obtaining from the public, either by purchase or exchange, used clothing, children's furniture, and children's products, provided the amount paid for the individual item purchased is less than \$50.
- (5) purchases by persons primarily in the business of obtaining from the public, either by purchase or exchange, sporting goods and sporting equipment, provided the amount paid for the individual item purchased is less than \$50.

This new law requires a cash converter to keep consecutively numbered records of each cash purchase. The cash converter shall, at the time of making the purchase, record all of the following information, which shall be typed or written in ink and in the English language:

- (1) A clear and accurate description of the property purchased by the cash converter from the seller, including model and serial number if indicated on the property.
- (2) The name, residence address, telephone number, and date of birth of the seller.
- (3) The date of the purchase.
- (4) The type of identification and the identification number accepted from the seller.
- (5) A description of the seller, including approximate height, weight, sex, and race.
- (6) The purchase price.
- (7) The statement that : “THE SELLER OF THIS ITEM ATTESTS THAT IT IS NOT STOLEN, HAS NO LIENS OR ENCUMBRANCES, AND IS THE SELLER'S TO SELL.”

The seller must sign the record and receive an exact copy of the record, which shall be signed or initialed by the cash converter. These records shall be available for inspection and pickup each regular workday by the sheriff's office of the county or the police department of the municipality in which the cash converter is located. These records may be electronically reported to the sheriff's office or police department by transmission over the Internet or by facsimile transmission in a manner authorized by the applicable sheriff or chief of police.

Effective: December 1, 2011

SENATE BILL 159, Convey Blue Ridge Correctional Facility to Mayland Community College, conveys the Blue Ridge Correctional Facility located in Avery County and which is no longer used to Mayland Community College which serves Avery, Mitchell and Yancey counties.

Effective: June 27, 2011

SENATE BILL 194, Alternative Fuel Vehicle Incentives, allows dedicated natural gas vehicles and fuel cell electric vehicles to drive in the High Occupancy Vehicle lanes no matter how many occupants are in the vehicle. This bill also exempts fuel cell electric vehicles from emission inspections. Both of these vehicles are defined to include four wheels, designed to operate on a highway, meet National Highway Traffic Safety Administration standards included in 49 C.F.R. § 571 and can reach a speed of at least 65 m.p.h. [Also see House Bill 222, Electric Vehicle Incentives, for similar provisions concerning “Plug-in electric vehicles.”]
Effective: June 23, 2011

SENATE BILL 241, DWI/Custodial Interrogation Amendments, provides that a person convicted of driving while impaired (DWI) must be punished at Level One punishment with, a minimum of 30 days in jail, when there was in the vehicle during the commission of the DWI:

- (i) a child under the age of 18 years (previous law was 16);
- (i) a person with the mental development of a child under the age of 18 years; or
- (ii) a person with a physical disability preventing unaided exit from the vehicle.

There is no requirement for a second grossly aggravating factor necessary to punish the defendant at Level One when a child or a disabled person is in the vehicle. **Section 1 of this bill was supported by the North Carolina Sheriffs’ Association.**

This bill also modifies G.S. § 15A-211 which previously provided for recording of custodial interrogations only in homicide cases. Under the new law, law enforcement officers are required to make an electronic recording of:

- (1) all custodial interrogations of juveniles.
- (2) any custodial interrogation of any person in a criminal investigation relating to any of the following crimes: any Class A, B1, or B2 felony, and any Class C felony of rape, sex offense, or assault with a deadly weapon with intent to kill inflicting serious injury.

This legislation expands current law to require that a visual and audio recording shall be simultaneously produced in the interrogations specified above whenever reasonably feasible, provided that a defendant may not raise this as grounds for suppression of evidence. **On Section 2 of this bill, the North Carolina Sheriffs’ Association had “no position.”**
Effective: December 1, 2011

SENATE BILL 261, Chowan Fox Season, establishes for Chowan County a no bag limit fox hunting season with weapons and by trapping during the trapping season set by the Wildlife Resources Commission each year, with no tagging requirements prior to or after the sale.
Effective: October 1, 2011

SENATE BILL 268, Enhance Protection of Victims and Witnesses, raises the punishment for witness intimidation under G.S. § 14-226(a) from a Class H felony to a Class G felony. **This bill was supported by the North Carolina Sheriffs’ Association.**
Effective: December 1, 2011

SENATE BILL 272, Victim's Compensation Law Changes, makes changes to the Crime Victim's Compensation Act. It allows reduction of benefits paid by the State to a crime victim for a charitable gift or donation by a third party to the crime victim, including a charity care write-off of expenses by a medical provider, regardless of whether the gift or donation is subsequently rescinded. The law specifies that a dependent of a crime victim can recover economic loss for up to a 26-week period commencing from the date of the injury, however compensation shall not exceed three hundred dollars (\$300.00) per week. All personal information, as that term is defined in 18 U.S.C. § 2725(3), of victims and claimants and all information concerning the disposition of claims for compensation, except for the total amount awarded a victim or claimant, must be kept confidential.

Effective: July 1, 2011

SENATE BILL 311, Pretrial Release Violations/Arrest, beginning December 1, 2011, allows a law enforcement officer to arrest a suspect without a warrant for violating a pretrial release order entered under G.S. § 15A-534 (Procedure for determining conditions of pretrial release) or G.S. § 15A-534.1(a) (2) (Crimes of domestic violence; bail and pretrial release), whether the offense occurred in the presence or outside the presence of the officer.

Effective October 1, 2011, for purposes of Chapter 15A of the General Statutes, electronic monitoring and satellite-based monitoring are defined to mean monitoring with an electronic monitoring device that is not removed from a person's body, that is utilized by the supervising agency in conjunction with a Web-based computer system that actively monitors, identifies, tracks, and records a person's location at least once every minute 24 hours a day, that has a battery life of at least 48 hours without being recharged, that timely records and reports or records the person's presence near or within a crime scene or prohibited area or the person's departure from a specified geographic location, and that has incorporated into the software the ability to automatically compare crime scene data with locations of all persons being electronically monitored so as to provide any correlation daily or in real time. In areas of the State where lack of cellular coverage requires the use of an alternative device, the supervising agency shall use an alternative device that works in concert with the software and records location and tracking data for later download and crime scene comparison.

By October 1, 2011, the Department of Correction is required to replace its electronic monitoring equipment currently being used with a provider that offers electronic monitoring equipment and service that provides exclusion zones around the premises of every elementary and secondary school in the State.

Also effective October 1, 2011, sex offenders who are required to have electronic monitoring must wear an electronic monitoring device that provides exclusion zones around the premises of all elementary and secondary schools in North Carolina. **This bill was supported by the North Carolina Sheriffs' Association.**

Effective: October 1, 2011

SENATE BILL 324, ABC Law/Eastern Band of Cherokee Indians, allows the Eastern Band of Cherokee Indians to adopt an alcoholic beverage control system for "Indian Country lands within this State" under their jurisdiction similar to North Carolina's system to regulate the purchase, possession, consumption, sale and delivery of alcoholic beverages.

Effective: June 27, 2011

SENATE BILL 394, Clarify Process/Reportable Offenses School, clarifies that a principal at a school is required to report the crimes listed in G.S. § 115C-288(g) if the principal has personal knowledge, a "reasonable belief" or actual notice from school personnel that one of the crimes occurred on school property. The bill repeals the section that makes failure to report those crimes a Class 3 misdemeanor and now provides that a principal who willfully fails to make a report to law enforcement required by this law may be subject to demotion or dismissal pursuant to G.S. § 115C-325. Pursuant to this new law, the State Board of Education cannot continue to require principals to report to law enforcement any acts that are in addition to those required to be reported by this law. This new law is effective beginning with the 2011-2012 school year.
Effective: June 23, 2011

SENATE BILL 397, Expunge Nonviolent Offense by Minor. A person who was under age 18 at the time a "nonviolent felony" is committed can have the arrest and conviction expunged from the person's record upon petitioning the court if the court finds:

- (1) The petitioner has remained of good moral character and has not been convicted of any felony or misdemeanor, other than a traffic violation, for four years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation, or post-release supervision has been served, whichever is later.
- (2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.
- (3) The petitioner has no outstanding warrants or pending criminal cases.
- (4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.
- (5) The petitioner was less than 18 years old at the time of the commission of the offense in question.
- (6) The petitioner has performed at least 100 hours of community service since the time of the conviction and possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.
- (7) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

A "nonviolent felony" does NOT include the following felonies:

- (1) A Class A through G felony.
- (2) A felony that includes assault as an essential element of the offense.
- (3) A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes.
- (4) A felony that is an offense that did not require registration under Article 27A of Chapter 14 of the General Statutes at the time of the commission of the offense, but does require registration on the date the petition to expunge the offense would be filed.

- (5) A felony charged for any of the following sex-related or stalking offenses: G.S. § 14-27.7A(b), 14-190.6, 14-190.7, 14-190.8, 14-202, 14-208.11A, 14-208.18, 14-277.3A, 14-321.1.
- (6) Any felony offense charged pursuant to 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.
- (7) A felony offense charged pursuant to G.S. § 14-12.12(b), 14-12.13, or 14-12.14, or any offense charged as a felony pursuant to G.S. § 14-3(c).
- (8) A felony offense charged pursuant to G.S. § 14-401.16.
- (9) A felony offense in which a commercial motor vehicle was used in the commission of the offense.

Persons granted an expunction under this section can deny they were arrested for or convicted of a felony and, if they do so, they will not be guilty of perjury or otherwise giving a false statement.

However, an expunction under this law will not prohibit a law enforcement agency from discovering this information for employment purposes only. The Administrative Office of the Court must provide its confidential file to State and local law enforcement agencies for employment purposes only and to the North Carolina Sheriffs' Education and Training Standards Commission and the North Carolina Criminal Justice Education and Training Standards Commission for certification purposes only. **This bill was supported by the North Carolina Sheriffs' Association.**

Effective: December 1, 2011

SENATE BILL 406, Repeal Crossbow Purchase Permit Requirement, repeals the requirement that a person obtain a permit from the sheriff to receive, sell, purchase or otherwise transfer a crossbow. **This bill was supported by the North Carolina Sheriffs' Association.**

Effective: April 28, 2011

SENATE BILL 449, Task Force on Fraud Against Older Adults, requires the Consumer Protection Division of the Department of Justice to coordinate a task force to examine the following issues:

- (1) Identifying, clarifying, and strengthening laws to provide older adults a broader system of protection against abuse and fraud.
- (2) Establishing a statewide system to enable reporting on incidents of fraud and mistreatment of older adults.
- (3) Identifying opportunities for partnership among the Banking Commission, the financial management industry, and law enforcement agencies to prevent fraud against older adults.
- (4) Granting the Attorney General authority to initiate prosecutions for fraud against older adults.

The Task Force must make an interim report to the North Carolina Study Commission on Aging on or before November 1, 2011, and a final report including findings, recommendations, and draft legislation on or before October 1, 2012. **This bill was supported by the North Carolina Sheriffs' Association.**

Effective: June 23, 2011

SENATE BILL 474, Photo ID for Certain Controlled Substances, requires that immediately prior to dispensing a Schedule II controlled substance, or any of the Schedule III controlled substances listed in subdivisions 1. through 8. of G.S. § 90-91(d), each pharmacy, not located in a health care facility, shall require the person seeking the controlled substance to present a valid, unexpired form of government-issued photographic identification.

The pharmacy shall document the name of the person, the type of photographic identification presented and the photographic identification number. The pharmacy shall retain this identifying information for a period of three years. The pharmacy must release this information within 72 hours to any person who is authorized by G.S. § 90-113.74 to receive information from the Controlled Substance Reporting System or the pharmacy must enter this information into the Controlled Substance Reporting System. This law does not prohibit one person from picking up a prescription for another person but the person picking up the prescription must present a valid identification as required by this law. **This bill was supported by the North Carolina Sheriffs' Association.**

Effective: March 1, 2012

SENATE BILL 581, Clarify Motor Vehicle Laws, amends G.S. § 20-79(d)(5) to allow an officer, sales representative, or other employee of a franchised motor vehicle dealer or a person who is an immediate family member of an officer, sales representative, or other employee of a franchised motor vehicle dealer to operate a motor vehicle that is part of the dealer's inventory using a dealer license tag.

Effective: August 1, 2011

SENATE BILL 600, Out-of-State Law Enforcement/Special Events, allows the City of Charlotte to enter into temporary intergovernmental law enforcement agreements with out-of-state law enforcement agencies or out-of-state law enforcement officers to aid in enforcing the laws of North Carolina during the 2012 National Democratic Party Convention scheduled for Charlotte. This law expires on October 1, 2012.

Effective: January 1, 2012

SENATE BILL 602, Domestic Fowl Stray/Commercial Poultry Lands, as amended by House Bill 335, makes it a Class 3 misdemeanor for any person to permit any domestic fowl to run at large on the lands of a commercial poultry operation of any other person after having received actual or constructive notice of such running at large. If sufficient evidence is presented to a magistrate showing that after three days' notice any person continues to allow his fowls to run at large in violation of this law and fails or refuses to keep them upon his own premises, then the magistrate may, in his discretion, order any sheriff or other officer to kill the fowls when they are running at large.

Effective: December 1, 2011

SENATE BILL 636, Modify Graduated Licensing Requirements, amends Level 2 restrictions for young drivers. As amended by House Bill 355, the effective dates are set forth below.

A young driver, who is issued a limited provisional license on or after October 1, 2011 who is driving unsupervised after 9:00 p.m. must be driving "directly" to or from work or "directly" to or from an activity of a volunteer fire department, volunteer rescue squad or volunteer emergency medical service.

For a young person with a limited learner's permit issued on or after January 1, 2012, a new requirement is established to graduate to a limited provisional license and Level 2 restrictions. The new requirement is that the driver must have completed a driving log, on a form approved by the Division of Motor Vehicles (DMV), detailing a minimum of 60 hours as the operator of a motor vehicle of a class for which the driver has been issued a limited learner's permit. The log must show that at least 10 hours of the required driving occurred during nighttime hours. The driving log must be signed by the supervising driver and submitted to DMV at the time the applicant seeks to obtain a limited provisional license. If DMV has cause to believe that a driving log has been falsified, the limited learner permit holder shall be required to complete a new driving log with the same requirements and shall not be eligible to obtain a limited provisional license for six months.

For any person with a limited provisional license issued on or after January 1, 2012, a new requirement is established to obtain a full provisional license and Level 3 restrictions, which only prohibits use of a cell phone. The new requirement is that the driver must have completed a driving log, on a form approved by DMV. The log must show a minimum of 12 hours as the operator of a motor vehicle of a class for which the driver is licensed. The log must show at least six hours of the required driving occurred during nighttime hours. If the Division has cause to believe that a driving log has been falsified, the limited provisional licensee shall be required to complete a new driving log with the same requirements and shall not be eligible to obtain a full provisional license for six months.

Effective for offenses committed on or after January 1, 2012 by any provisional license, if the person is charged with certain offenses their driving privileges will be revoked prior to the driver's trial. Any provisional licensee, a person under age 18, who is charged with a moving offense under either Part 9 or 10 of Article 3 of Chapter 20 which is a misdemeanor or a felony, must be taken before a judicial official by the law enforcement officer and a revocation report must be completed. The judicial official shall immediately revoke the young person's driving privileges for 30 days upon a finding that probable cause exists to believe that a violation occurred. A copy of the revocation order must be sent to DMV by the Clerk of Court.

Note: This procedure is similar to the civil pretrial revocation procedure for impaired driving under G.S. § 20-16.5. The revocation under the new law applies to drivers under age 18 (who are at least age 16) who commit misdemeanors or felonies found in either Part 9 or Part 10 of Article 3 of Chapter 20 other than one that will result in a revocation under G.S. § 20-16.5.

Part 9 of Chapter 20 includes statutes numbered G.S. §§ 20-115 to 20-137.5. This Part includes the laws that regulate size, weight and construction of vehicles plus those that prohibit texting while driving and use of mobile phones by persons under age 18. The child safety restraint and seatbelt laws are in this part also. Most of the offenses in Part 9, that an 18 year old would likely commit, are infractions and no revocation is allowed.

Part 10 of Chapter 20 includes statutes numbered G.S. §§ 20-138.1 to 20-171. Part 10 is known as the rules of the road. This Part includes, among many offenses, the impaired driving and alcohol related statutes, open container offenses, reckless driving, speeding, vehicular homicide statutes, unsafe movement, and hit and run. The misdemeanors and felonies which will require a revocation of the driver's license under this new law include:

- (1) Open container laws, G.S. § 20-138.7, except for 20-138.7(a1) which is an infraction;
- (2) Reckless driving, G.S. § 20-140(a) and (b);
- (3) Speeding more than 15 m.p.h. over the posted limit, G.S. § 20-141(j) (even if not in excess of 55 m.p.h.);
- (4) Speeding in excess of 80 m.p.h., G.S. § 20-141(j);
- (5) Racing, G.S. § 20-141.3;
- (6) Misdemeanor death by vehicle, G.S. § 20-141.4;
- (7) Speeding to elude arrest, both felony and misdemeanor, G.S. § 20-141.5;
- (8) Aggressive driving, G.S. § 20-141.6; and
- (9) Hit and run, G.S. § 20-166.

Remember if the provisional licensee has his or her drivers license revoked under G.S. § 20-16.5 (immediate civil license revocation for certain persons charged with implied-consent offenses) the license is not revoked under the new law. This list is merely a sample of the common misdemeanors. The Administrative Office of the Courts will develop an affidavit form for this new revocation with additional instructions.

The Division of Motor Vehicles is required to study teen driving fatalities and report to the Legislative Transportation Oversight Committee not later than February 1, 2014.
Effective: October 1, 2011

SENATE BILL 684, Sex Offender Supervision/Forensic Amendments, addresses the situation where a convicted felon refuses post-release supervision and chooses to return to prison rather than comply with post-release supervision. Effective for offenses occurring on or after December 1, 2011, offenders sentenced for a Class B1 through E felony that is a conviction subject to the sex offender registration requirements are given 60 months of post-release supervision and have 60 months added to their maximum sentence. Beginning June 27, 2011, an offender who refuses to accept post-release supervision or to comply with the terms of post-release supervision may be punished for contempt of court by the Post-Release Supervision and Parole Commission. The sentence given for contempt of court does not count as credit for time served against the sentence for which the prisoner is subject to post-release supervision.
Effective: June 27, 2011

SENATE BILL 686, 2011 Appointments Bill, as amended by Senate Bill 354, names appointments to boards and commissions by the Speaker of the House and the President Pro Tempore of the Senate.

The President Pro Tempore of the Senate appointments include:

- (1) Charles T. Johnson of Wake County, John Hawkins of Durham County, James Festerman of Rockingham County [retired Reidsville Chief of Police and current Mayor of Reidsville], and Robert Myrick of New Hanover County to the North Carolina Criminal Justice Education and Training Standards Commission for terms expiring on June 30, 2013.
- (2) Augustus A. Adams of Beaufort County to the Crime Victims Compensation Commission for a term expiring on June 30, 2013, to fill the unexpired term of Joyce Cutler.

- (3) W.M. "Marc" Nichols of Johnston County [retired Major, State Highway Patrol] to the North Carolina Sheriffs' Education and Training Standards Commission for a term expiring on June 30, 2013.

The Speaker of the House appointments include:

- (1) Sheriff Rick Davis of Henderson County to the 911 Board for a term expiring on December 14, 2014, to fill the unexpired term of Sheriff Alan Cloninger.
- (2) Tammy Huffman West of Catawba County to the Crime Victims Compensation Commission for a term expiring on June 30, 2015.
- (3) R. Steven Johnson of Wake County [retired, NC Justice Academy], Chief Patricia Bazemore of Wake County [Cary Chief of Police], Angela Williams of Guilford County, and Diane Isaacs of Cumberland County to the North Carolina Criminal Justice Education and Training Standards Commission for terms expiring on June 30, 2013.
- (4) Norlan Graves of Halifax County and Victor Watts of Wake County to the Criminal Justice Information Network (CJIN) Governing Board for terms expiring on June 30, 2015.

Effective: July 1, 2011

SENATE BILL 762, Assault on Law Enforcement & Emergency Worker/Felony.

Law Enforcement, Probation, Parole, and Detention Officers

This legislation enacts a new G.S. § 14-34.7(c) which makes it a Class I felony if a person:

- (1) Assaults a law enforcement officer, probation officer, or parole officer while the officer is discharging or attempting to discharge his or her official duties and inflicts "physical injury" on the officer.
- (2) Assaults a person who is employed at a detention facility operated under the jurisdiction of the State or a local government while the employee is in the performance of the employee's duties and inflicts "physical injury" on the employee.

For the purposes of this act, "physical injury" includes cuts, scrapes, bruises, or other physical injury which does not constitute "serious injury."

Firefighters and Emergency Medical Personnel

This bill rewrites G.S. § 14-34.6 to require that any assault under this section must cause "physical injury" and raises the punishment from a Class A1 misdemeanor to a Class I felony. G.S. § 14-34.6 is expanded to include not only emergency medical technicians, emergency room nurses and firefighters, but it now also includes:

- (1) Other emergency health care provider.
- (2) A medical responder.
- (3) The following emergency department personnel: physicians, physicians' assistants, nurses, and licensed nurse practitioners.

The bill raises the punishment from a Class I felony to a Class H felony if the person inflicts "serious" bodily injury or uses a deadly weapon other than a firearm. "Serious" bodily injury is not defined in this statute.

NOTE: The General Assembly did not repeal G.S. § 14-32.4 which makes it a class F felony to assault any person and inflict "serious bodily injury." Serious bodily injury is defined in G.S. § 14-32.4 as "bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization." The court will usually borrow definitions from one statute to interpret another involving the same conduct. Officers may want to consult the district attorney's office about which charge to use.

State of Emergency

The punishment for assault on emergency personnel in the area of a declared state of emergency or immediate vicinity of a riot pursuant to G.S. § 14-288.9(c) is increased from a Class 1 misdemeanor to a Class I felony. The term "emergency personnel" as defined in this particular statute includes law enforcement officers, firefighters, ambulance attendants, utility workers, doctors, nurses, and other persons lawfully engaged in providing essential services during the emergency.

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

Effective: December 1, 2011

SENATE BILL 771, Single Trip Permits/Modular Homes, allows the Department of Transportation to issue single trip permits for the transport and delivery of a manufactured or modular home with a maximum width of 16 feet and a gutter edge that does not exceed three inches. The authorized trips include:

- (1) from the manufacturer to an authorized dealership within this State;
- (2) for delivery by a manufacturer and authorized dealer or their transporters to a location within this State; and
- (3) for transport by a homeowner from one location to another within this State.

Effective: October 1, 2011