

2014 LEGISLATION OF INTEREST TO COURT OFFICIALS
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Each ratified act discussed here is identified by its chapter number in the session laws and the number of the original bill. When an act creates new sections in the North Carolina General Statutes (hereinafter G.S.), the section number is given; however, the codifier of statutes may change that number later. Copies of bills may be viewed on the General Assembly's website at <http://www.ncleg.net>.

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Criminal Law and Procedure

1. **[S.L. 2014-3 \(H 1050\): Controlled substances excise tax change; vapor products regulated in prisons and jails.](#)** This 48-page session law amends various revenue laws and includes a few changes affecting criminal law. The section numbers and pages of the session law are noted to facilitate locating the provisions.

Effective May 29, 2014, amended G.S. 105-113.107(a) (controlled substances excise tax) adds an excise tax at the rate of \$50.00 for each gram, or fraction thereof, of any "low-street-value drug" (defined in G.S. 105-113.106(4d)) that is sold by weight. Section 14.25 (pages 44-45).

Effective for offenses committed on or after December 1, 2014, G.S. 14-344.1(a)(3) is revised concerning the sales and use tax requirements when reselling admission tickets on the Internet. Section 14.27 (page 45).

Effective July 1, 2014, amended G.S. 148-23.1 prohibits the possession or use of "vapor products" (defined in amended G.S. 148-23.1(d) to include electronic cigarettes, cigars, etc.) at a state correctional facility. The sanctions for violations of G.S. 148-23.1 remain as disciplinary actions against inmates or employees or loss of visitation privileges of visitors as specified in the statute. Section 15.2 (page 47).

Effective for offenses committed on or after December 1, 2014, amended G.S. 14-258.1(c) and

(e) prohibit the sale or delivery of vapor products to an inmate in a prison or jail and prohibit a jail inmate from possessing vapor products. A violation of G.S. 14-258.1(c) or (e) remains a Class 1 misdemeanor. Section 15.2 (page 47).

2. **S.L. 2014-4 (S 786): Oil and gas exploration, development, and production.** This lengthy session law contains many provisions concerning oil and gas exploration, development, and production. Some pertinent criminal law provisions are summarized here. New G.S. 113-391.1 (trade secret and confidential information) provides that the knowing and willful disclosure of confidential information to an unauthorized person is a Class 1 misdemeanor. New G.S. 113-395.2 provides that the unlawful subsurface injection of waste in connection with oil and gas exploration is a Class 1 misdemeanor. New G.S. 113-395.4 provides that conducting seismic or geophysical data collection activities through physical entry to land without a landowner's written consent is a Class 1 misdemeanor. These provisions are effective December 1, 2014.
3. **S.L. 2014-21 (H 777): Sex offender prohibited from residing with 1,000 feet of Boys and Girls Clubs of America site.** This session law amends the definition of "child care center" in G.S. 14-208.16(b) to prohibit a registered sex offender or a person who is required to register from residing within 1,000 feet of a permanent location of an organized club of Boys and Girls Clubs of America. The law is applicable to all people registered or required to register as a sex offender on or after June 24, 2014. However, the session law does not apply to a person who has established a residence before June 24, 2014, in accordance with G.S. 14-208.16(d)(1), (2), or (3).
4. **S.L. 2014-22 (S 463): Law expanded statewide that provides that county detention facility may house up to 64 inmates per dormitory under certain conditions.** G.S. 153A-221(d) provides that a dormitory in a county detention facility may house up to 64 inmates as long as the dormitory meets certain conditions. This session law, effective June 18, 2014, makes this statutory subdivision applicable to all counties in the state by deleting the provision that limited its applicability to counties with a population exceeding 300,000 according to the most recent decennial federal census.
5. **S.L. 2014-27 (H 698): Criminal history checks authorized of current members of volunteer or paid fire departments and emergency medical services; urban search and rescue program created.** This session law amends G.S. 114-19.12, effective January 1, 2015, to authorize criminal history checks of current members of volunteer or paid fire departments and emergency medical services. The current statute only authorizes checks of applicants for these positions. The session law also adds a new Article 6 to G.S. Chapter 166A, effective July 1, 2014, to create a statewide urban search and rescue program to be maintained by the Division of Emergency Management of the state Department of Public Safety. The program will provide, among other things, for an urban search and rescue team to assist in the removal of trapped victims during emergencies, including collapsed structures, trench excavations, elevated locations, and in other technical rescue situations. The program must include contract response teams located strategically across the state that are available to provide 24-hour dispatch from the Division of Emergency Management Operations Center. The Secretary of Public Safety may contract with local government units to provide contract response teams to implement the program. Before implementation of the program, the department must study its costs, including the apportionment of costs between State and local government entities, and a report of the results of the study must be provided to a designated legislative committee and the Fiscal Research Division by January 15, 2015.

6. **S.L. 2014-53 (H 1220): Pilot study on safety and efficacy of hemp extract treatment for intractable epilepsy.** This session law authorizes university-based studies of the safety and efficacy of hemp extract treatment for intractable epilepsy. In doing so, it enacts new G.S. 90-94.1 to exempt from criminal penalties the people involved in the study who possess or administer “hemp extract” as defined in the statute, which is effective on the adoption of rules by the state Department of Health and Human Resources. The rules must be adopted by October 1, 2014.
7. **S.L. 2014-58 (H 1025): Ramp meter violation created.** This session law contains several changes involving the state Department of Transportation. Of direct relevance to criminal law, section 10 amends G.S. 20-4.01 to define “ramp meter” as a traffic control device that consists of a circular red and circular green display placed at a point along an interchange entrance ramp. New G.S. 20-158(c)(6), effective for offenses committed on or after December 1, 2014, provides that when a ramp meter is displaying a circular red display, vehicles facing the red light must stop. When displaying green, a vehicle may proceed for each lane of traffic facing the meter. When the display is dark or not red or green, a vehicle may proceed without stopping. A violation of the subdivision is an infraction without assessment of driver’s license points or insurance surcharge.
8. **S.L. 2014-77 (S 794): Presumptive child support guidelines to include retroactive support obligation.** G.S. 50-13.4(c1) requires the Conference of Chief District Court Judges to prescribe statewide presumptive guidelines to compute a parent’s child support obligations and to review them at least once every four years. This session law, effective July 22, 2014, amends the statute to require the guidelines to include retroactive support obligations.
9. **S.L. 2014-100 (S 744): 2014 Appropriations Act.** This session law makes base budget appropriations for current operations and other changes. Unless otherwise noted, the provisions are effective July 1, 2014. The section numbers and pages of the session law are noted to facilitate locating the provisions.

Medical examiner system. Amended G.S. 130A-382 provides that the Chief Medical Examiner in appointing medical examiners for each county must give preference to physicians but may also appoint physician assistants, nurse practitioners, nurses, coroners, or emergency medical technician paramedics. Studies are authorized of the Office of Chief Medical Examiner and the medical examiner system. Sections 12E.5 and 12E.6 (pages 79-80).

Specified legislative committees are required jointly to study the merger of the State Crime Laboratory and the Office of the State Medical Examiner into a single independent state agency and to report to the 2015 legislative session. Section 17.3 (page 183).

Marine fisheries joint enforcement agreement. Amended G.S. 113-224 authorizes the marine fisheries director or designee to enter an agreement with the National Marine Fisheries Service of the U.S. Department of Commerce allowing Division of Marine Fisheries inspectors to accept delegation of law enforcement powers over matters within the jurisdiction of the service. Section 14.11 (page 126).

Alcohol Beverage Control (ABC) Commission. Effective October 1, 2014, the ABC Commission is transferred administratively from the Department of Commerce to the Department of Public Safety, but the commission will exercise its powers independently of the Secretary of Public Safety. Section 15.2A (page 137).

Effective for criminal charges brought on or after October 1, 2014, amended G.S. 18B-904 requires the ABC Commission to immediately suspend permits issued by it for 30 days if (1) ALE agents or local ABC Board officers provide advance notice to the commission’s legal division staff of an ongoing undercover operation; and (2) after executing a search warrant resulting from the

undercover operation, five or more people are criminally charged with violations of gambling, disorderly conduct, prostitution, controlled substance, or felony counterfeit trademark laws. Section 15.2A1 (page 137).

All misdemeanants to serve sentences in local confinement facilities. Various statutes are amended to remove all misdemeanants, including impaired driver (DWI) defendants, from the state prison system, expanding on changes made in 2011. All misdemeanor sentences in excess of 90 days and all DWI sentences, regardless of length, are served through the State Misdemeanant Confinement Program. Amended G.S. 15A-1351(a) provides that all terms of special probation imposed at sentencing for misdemeanors, including impaired driving, must be served in a local confinement or treatment facility, not in prison. This section is effective October 1, 2014, and applies to (1) defendants placed on probation or sentenced to imprisonment for impaired driving under G.S. 20-138.1 on or after January 1, 2015; and (2) defendants placed on probation or sentenced to imprisonment for all other misdemeanors other than impaired driving under G.S. 20-138.1 on or after October 1, 2014. Section 16C.1 (pages 155-59). For more information about DWI sentencing, see number 3 in “Motor Vehicle Law” on page 11.

Confinement in response to violation (CRV) for probationers. Amended G.S. 15A-1344(d2), effective for probation violations occurring on or after October 1, 2014, provides that the 90-day term of confinement ordered for a felony shall not be reduced by credit for time already served in the case; instead, the credit shall be applied to the suspended sentence. The statute is also amended to delete the provision for misdemeanors that confinement awaiting the probation hearing must be first credited to the active sentence. For a comprehensive analysis of these credit changes, see Jamie Markham, *Sentencing Legislation Review Part I: New Credit Rules for CRV*, North Carolina Criminal Law (UNC School of Government, September 8, 2014), <http://nccriminallaw.sog.unc.edu/?p=4921>. The amended statute also makes clear that CRV confinement for felonies will be in a state correctional facility, and misdemeanor CRV will be served where the defendant would have served an active sentence (either the local jail or the Statewide Misdemeanant Confinement program, depending on the length of the sentence). Section 16C.10 (page 161) authorizes the Department of Public Safety to convert closed facilities into “treatment and behavior modification facilities” for probationers serving a CVR period. Section 16C.8 (page 161).

Reorganization of State Bureau of Investigation (SBI), Division of Criminal Information, and Alcohol Law Enforcement Section. The Division of Criminal Information is transferred from the Department of Justice to the Department of Public Safety. The remainder of the State Bureau of Investigation is transferred from the Department of Justice as a new section within the Law Enforcement Division of the Department of Public Safety. However, the SBI will be an independent agency under the direction and supervision of the SBI Director, who will be appointed for an eight-year term by the Governor subject to confirmation by the General Assembly. The Alcohol Law Enforcement Section is relocated as a branch (Alcohol Law Enforcement Branch) under the SBI, but the branch will be separate and discrete. Amended G.S. 18B-500(b) provides that an alcohol law enforcement agent’s primary responsibility is the enforcement of ABC and lottery laws, deleting both the Controlled Substances Act and any duty assigned by the Secretary of Public Safety or the Governor. Section 17.1 (pages 164-83).

Transfer of Private Protective Services Board and Alarm Systems Licensing Board to Department of Public Safety. The Private Protective Services Board and the Alarm Systems Licensing Board are transferred from the Department of Justice to the Department of Public Safety. Section 17.5 (page 185).

Indigent Defense Services fee transparency. The Office of Indigent Defense Services (IDS), in consultation and cooperation with the Office of State Controller and Office of State Budget and

Management, is required to develop and implement a plan for making certain information in fee applications by attorneys publicly available online, with guidelines set out in the section. IDS must report by October 1, 2014, to specified legislative subcommittees on its progress in developing the plan. Section 18A.1 (page 186).

Four special superior court judgeships abolished and two new special superior court judgeships requested to be designated by the Chief Justice as business court judgeships. Four special superior court judgeships are abolished as specified in the section, and the Chief Justice of the North Carolina Supreme Court is requested to designate two newly-created special superior court judgeships as business court judgeships, which will involve the Governor appointing the judges subject to confirmation by the General Assembly. Section 18B.6 (page 190). For more information about this provision, see “Judicial Authority and Administration” on page 20.

Determination of allocation of assistant district attorneys to prosecutorial districts to include consideration of National Center for State Courts workload formula. The determination of the allocation of assistant district attorneys to prosecutorial districts to be recommended by the Administrative Office of the Courts to the General Assembly (G.S. 7A-60) and developed by the General Assembly (G.S. 7A-63) must consider the workload formula established by the National Center for State Courts. Section 18B.7 (page 191).

Court costs assessed for private hospital performing toxicological testing for prosecutorial district as well as expert witness fees. Amended G.S. 7A-304(a), applicable to fees assessed on or after December 1, 2014, creates two new court cost provisions for convicted defendants under specified circumstances: (1) for a private hospital performing toxicological testing (bodily fluids for the presence of alcohol or controlled substances) under contract with a prosecutorial district, the sum of \$600 is to be remitted to the State Treasurer for the General Court of Justice; and (2) for an expert witness employed by a private hospital performing toxicological testing under contract with a prosecutorial district who completes a chemical analysis under G.S. 20-139.1 and testifies at trial, the sum of \$600 is to be remitted to the State Treasurer for the General Court of Justice. Section 18B.14 (pages 191-93).

State Auditor to report criminal misconduct. Amended G.S. 147-64.6(c) provides that whenever the State Auditor believes that information received or collected by the Auditor may be evidence of criminal misconduct, the Auditor must report that information to either the State Bureau of Investigation or the district attorney of the county where the alleged misconduct occurred. Section 25.3 (pages 208-209).

Remote driver’s license renewal. Amended G.S. 20-7(f), applicable to driver’s licenses renewed on or after the date when the Division of Motor Vehicles (DMV) adopts rules, authorizes the DMV to offer remote renewal of a driver’s license by mail, telephone, electronic device, or secure means as specified in the new statutory provision. Section 34.8 (pages 213-14).

Regulation of unmanned aircraft systems (commonly known as drones). New G.S. 15A-300.1 and -300.2, applicable to acts occurring on or after October 1, 2014, generally prohibits using an “unmanned aircraft” (defined as an aircraft operated without the possibility of human intervention from within or on the aircraft and is not a model aircraft) system to: (1) conduct surveillance of a person, an occupied dwelling, or private real property without consent; or (2) photograph a person without consent for the purpose of publishing or otherwise publicly disseminating the photograph. There are five law enforcement exceptions: (i) to counter a high risk of a terrorist attack, (ii) to conduct surveillance within an officer’s plain view when the officer has a legal right to be at the location, (iii) execute a search warrant authorizing the use of unmanned aircraft system, (iv) having reasonable suspicion of specified imminent circumstances, and (v) photograph gatherings where the general public is invited. A civil remedy is authorized for statutory violations. Evidence obtained in violation of the statute is inadmissible in a criminal prosecution except when obtained under an

objectively reasonable, good-faith belief that the actions were lawful. An unmanned aircraft system may not be launched or recovered from any state or private property without consent. A local government may adopt an ordinance to regulate the use of a local government's property for the launch or recovery of an unmanned aircraft system. Section 34.30 (pages 227-28).

The following new or amended criminal offenses are effective for offenses committed on or after December 1, 2014. New G.S. 14-7.45 provides that all crimes committed by use of an unmanned aircraft system while in flight over the state shall be governed by state laws, which will determine whether the conduct of the unmanned aircraft system while in flight over the state constitutes a crime by the owner. New G.S. 14-280.3 provides that a person who interferes with a manned aircraft by an unmanned aircraft system is guilty of a Class H felony. New G.S. 14-401.24 provides that a person who (1) possesses or uses an unmanned aircraft or aircraft system with an attached weapon is guilty of a Class E felony, or (2) fishes or hunts using an unmanned aircraft system is guilty of a Class 1 misdemeanor. New G.S. 14-401.25 provides that the unlawful distribution of images taken by an unmanned aircraft system is a Class A1 misdemeanor. Amended G.S. 113-295 provides that the unlawful interference under subsection (a) of the statute with a person taking wildlife resources by the use of an unmanned aircraft system is a Class 1 misdemeanor. Section 34.30 (pages 228-29).

New Article 10 (G.S. 63-95 and -96) of G.S. Chapter 63 prescribes the training (including a knowledge and skills test) required to operate an unmanned aircraft system and the license required for the commercial operation of such a system. Section 34.30 (pages 229-30).

The ban on the procurement or operation of an unmanned aircraft system by a state or local government is effectively extended until December 31, 2015, unless the Office of the State Chief Information Officer approves an exception. Section 7.16 (page 26).

10. **S.L. 2014-103 (H 366): Trespass law changes; periodic inspections by N.C. Housing Finance Agency.**

Amended G.S. 14-159.12 (first-degree trespass) adds to the Class A1 misdemeanor in subsection (c) a trespass on the premises of any facility used or operated for agricultural activities as defined in G.S. 106-581.1. Amended G.S. 14-159.3 (trespass to land on motorized all-terrain vehicle) (1) requires that the owner's consent to allow a person to use the vehicle must be in writing; and (2) provides that a landowner who gives a person written consent to operate an all-terrain vehicle on his or her property owes the person the same duty of care that he or she owes a trespasser. Both trespass law changes are effective for offenses committed on or after December 1, 2014.

Amended G.S. 153A-364 (county periodic inspections) and G.S. 160A-424 (city periodic inspections), effective August 6, 2014, provide that a residential building or structure that is subject to periodic inspections by the N.C. Housing Finance Agency shall not be subject to periodic inspections if the agency has issued a finding that the building or structure is in compliance with federal standards.

11. **S.L. 2014-107 (S 773): Videoconferencing of inpatient commitment hearing; slayer statute modified.**

Amended G.S. 122C-268(g), effective August 6, 2014, provides that an inpatient commitment hearing may be held by interactive videoconferencing between a treatment facility and a courtroom. Amended G.S. 31A-6, effective for property subject to Article 3 of G.S. Chapter 31A for decedents dying on or after October 1, 2014, modifies the slayer statute (barring slayer from inheriting homicide victim's property) to account for property held in joint tenancy in unequal shares.

12. **S.L. 2014-108 (H 272): Modification of site of Division of Motor Vehicles (DMV) hearing considering alleged ignition interlock violation; single registration renewal sticker.** Amended G.S.

20-17.8(j)), applicable to hearings requested on or after October 1, 2014, provides that the site of a DMV hearing considering an alleged ignition interlock violation may be conducted in the county where the person resides when evidence of the violation is an alcohol concentration report from an ignition interlock system. All ignition interlock violation hearings under this statute were previously required to be conducted in the county where the charge was brought. The act also modifies G.S. 20-66(c), effective January 1, 2015, to provide that a *single* registration renewal sticker issued by DMV must be displayed on the registration plate that it renews in the place prescribed by the Commissioner.

13. **S.L. 2014-114 (H 1145): Mopeds required to be registered with Division of Motor Vehicles (DMV).**

Effective for offenses committed on or after July 1, 2015 (note the year in this date), new G.S. 20-53.4 provides that mopeds must be registered with the DMV, and the moped owner must pay the same base fee and be issued the same type of registration card and plate as for a motorcycle. To be registered and to operate on a highway or public vehicular area (PVA), (1) a moped must have a manufacturer's certificate of origin; and (2) the moped must be designed and manufactured for use on highways and PVAs. Amended G.S. 20-76 sets out procedures when an applicant for registration of a moped is unable to present a manufacturer's certificate of origin. Effective August 6, 2014, the Joint Legislative Transportation Oversight Committee must study whether additional statutory changes are needed to ensure a moped's safe operation, including whether insurance should be required. The committee must report to the 2015 legislative session.

14. **S.L. 2014-115 (H 1133): Miscellaneous criminal law changes-1.** This 58-page session law makes miscellaneous changes to a variety of statutes, including criminal provisions, which are effective on August 11, 2014, unless otherwise noted. The section numbers and pages of the session law are noted to facilitate locating the provisions.

Crime Victims' Rights Act changes. Amended G.S. 15A-830(a)(7), involving the Crime Victims' Rights Act, revises the listing of offenses included within the act to reflect reclassifications and repeals, and specifically states that the changes do not adversely affect the rights granted to victims before these changes become effective. Section 2.1 (pages 2-3).

Magistrates' authority to take guilty pleas. Amended G.S. 7A-273(2) (magistrates' authority to accept guilty pleas) includes open burning offenses under Article 78 of G.S. Chapter 106. Section 20 (page 13).

Local jail may sell or give vapor products to inmates. Effective for offenses committed on or after December 1, 2014, amended G.S. 14-258.1 allows local confinement facilities to give or sell vapor products or FDA-approved tobacco cessation products to inmates in their custody. Section 23 (page 13).

Superior court clerk's reporting duties. A clerk of superior court's reporting duties under G.S. 14-404(c1) to the National Instant Criminal Background Check System (NICS) involving pistol permits issued by sheriffs are delayed from beginning on July 1, 2014, to January 1, 2015, and clarifies that the clerk must determine which information can "practicably be transmitted" to NICS. Section 23.5 (pages 13-14).

Transferring seized firearm to law enforcement agency. Amended G.S. 15-11.1(b1)(4) allows a court order transferring a seized firearm to a law enforcement agency to be issued without a written request of the head of the agency. Section 24.5 (page 14).

Motor vehicle law definition of "serious traffic violation." Amended G.S. 20-4.01(41a) includes within the definition of a "serious traffic violation" the unlawful use of a mobile telephone while operating a commercial motor vehicle. Section 28.3 (pages 18-19).

Commercial driver's license law changes. Amended G.S. 20-37.13 provides that the issuance of a commercial driver's learner's permit is a precondition to the initial issuance of a commercial driver's license and also a precondition to the upgrade of a commercial driver's license if the upgrade requires a skills test. Section 28.5 (page 19). For additional commercial driver's license provisions, see "Motor Vehicle Law" on page 11.

Repeal of local acts governing disposition of deadly weapons. Local acts for five counties (Harnett, Pamlico, Perquimans, Scotland, and Warren) are repealed that had governed the disposition of deadly weapons after a conviction. Disposition in these counties are now governed by G.S. 14-269.1 (confiscation and disposition of deadly weapons) in the same manner as the other 95 counties. Section 61 (page 53).

15. **S.L. 2014-119 (H 369): Miscellaneous criminal law changes-2.** This session law makes miscellaneous changes to a variety of statutes affecting criminal law. The changes are effective September 18, 2014, unless otherwise noted.

Expunction changes. Amended G.S. 15A-145.5 (expunction of certain misdemeanors and felonies; no age limitation) adds to the list of offenses that are not considered a "nonviolent misdemeanor" or "nonviolent felony": (1) an offense under G.S. 14-54(a) (felony breaking or entering), 14-54(a1) (breaking or entering with intent to terrorize), or 14-56 (breaking or entering motor vehicle), and (2) any offense that is an attempt to commit an offense described in G.S. 15A-145.5(a)(1) through (8). This change applies to petitions filed on or after December 1, 2014, but petitions filed before that date are not abated by the change. Amended G.S. 15A-145.5(f), effective September 18, 2014, and applicable to expunctions issued under this statute before, on, or after that date, effectively provides that fingerprint records related to this expunction must be expunged.

New conditional discharge provisions. Amended G.S. 15A-1341 (probation), effective December 1, 2014, provides that when a defendant pleads guilty or is found guilty of a Class H or I felony or a misdemeanor, the court may, on joint motion of the defendant and the prosecutor, defer further proceedings for the possibility of conditional discharge. The court must make certain findings (defendant has not been convicted of a felony or a misdemeanor involving moral turpitude, not previously placed on probation, etc.) without entering a judgment of guilt and place the defendant on probation to allow the defendant to demonstrate good conduct. Another conditional discharge provision provides that when a defendant is eligible for the drug treatment court program under Article 62 of G.S. Chapter 7A, a court may, without entering a judgment of guilt and with the defendant's consent, defer proceedings and place the defendant on probation to allow participation in and completion of the drug treatment court program.

On fulfillment of the terms and conditions of a conditional discharge, a plea or finding of guilt previously entered must be withdrawn and the court must discharge the defendant and dismiss the proceedings. However, if there is a violation of a term or condition of conditional discharge, the court may enter an adjudication of guilt and proceed as otherwise provided.

Reduced punishment if defendant possesses marijuana paraphernalia. New G.S. 90-113.22A creates the Class 3 misdemeanor of possession of marijuana paraphernalia, and marijuana is removed from the current Class 1 misdemeanor of possession of drug paraphernalia in G.S. 90-113.22. Also, the new Class 3 misdemeanor is made a lesser-included offense of the Class 1 misdemeanor. These changes are effective for offenses committed on or after December 1, 2014.

Cell phone offenses in prisons or jails. Effective for offenses committed on or after December 1, 2014, amended G.S. 14-258.1: (1) increases the punishment from a Class 1 misdemeanor to a Class H felony under subsection (d) for giving or selling a cell phone or other device to a state prisoner or local confinement facility inmate; and (2) provides that a state prisoner or local confinement facility inmate who possesses a cell phone or other device commits a Class H felony.

Broaden scope of assault on or threat against legislative, executive, or court officials. The criminal statutes (G.S. 14-16.6 and 14-16.7) punishing assaults on and threats against legislative, executive, and court officials are broadened to include an assault or threat on another person as retaliation against these officials. These changes are effective for offenses committed on or after December 1, 2014.

Course exemption for concealed handgun permit for retired correctional officer. Amended G.S. 14-415.12A(a) adds a “qualified retired correctional officer” (as defined in new G.S. 14-415.10(4c)) to officers who are exempt from the course requirement to obtain a concealed handgun permit.

Remote video testimony by forensic and chemical analysts. New G.S. 15A-1225.3 (forensic analyst’s remote testimony involving the results of forensic testing under G.S. 8-58.20 in criminal proceeding or juvenile court) and new G.S. 20-139.1 (chemical analyst’s remote testimony involving results of blood or urine analysis in any court or administrative hearing), effective for testimony admitted on or after September 1, 2014, authorizes remote testimony if: (1) the State has provided a copy of the analyst’s report to the defendant’s attorney or an unrepresented defendant; (2) the State notifies the attorney or an unrepresented defendant at least 15 business days before the proceeding of its intention to use remote testimony; and (3) the defendant’s attorney or an unrepresented defendant fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding of the defendant’s objection to the introduction of the remote testimony.

Detention officers authorized to carry weapons on educational property. Amended G.S. 14-269.2 (weapons on campus or other educational property), effective for offenses committed on or after December 1, 2014, authorizes detention officers employed by and authorized by the sheriff to carry firearms on campus or educational property when discharging official duties.

Dangerous firearms in G.S. 14-316 (permitting child under 12 to use dangerous firearms only under limited conditions). Subsection (b) of G.S. 14-316 (permitting child under 12 to use dangerous firearms only under limited conditions) provides that air rifles, air pistols, and BB guns are not considered dangerous firearms except in certain listed counties. This session law, effective for offenses committed on or after December 1, 2014, removes Anson, Caswell, Chowan, Cleveland, Cumberland, Harnett, Stanly, and Surry counties from that list of counties.

Punishments for carrying concealed weapon. Amended G.S. 14-269(c), effective for offenses committed on or after December 1, 2014, makes the following changes: (1) the punishment for a second or subsequent offense for a violation of G.S. 14-269(a1) (carrying concealed gun when not otherwise permitted to do so) is increased from a Class I felony to a Class H felony; and (2) provides that a violation of G.S. 14-269(a1) that is punishable under G.S. 14-415.21(a) (infraction for person with concealed handgun permit to carry concealed handgun without permit in one’s possession or fails to disclose to officer that person holds permit and is carrying a concealed handgun) is not punishable under G.S. 14-269.

16. [S.L. 2014-120 \(S 734\): Miscellaneous criminal law changes-3](#). This 40-page session law makes miscellaneous changes to a variety of statutes, including criminal provisions, which are effective on September 18, 2014, unless otherwise noted. The section numbers and pages of the session law are noted to facilitate locating the provisions.

Surety may use assistance of other bondsmen and runners to effect arrest or surrender of defendant. Amended G.S. 15A-540 provides that a surety may utilize the services and assistance of any surety bondsman, professional bondsman, or runner licensed under G.S. 58-71-40 to effect the arrest or surrender of a defendant under G.S. 15A-540. Section 12 (page 9).

Euthanasia of venomous reptile clarified. Amended G.S. 14-419(b) clarifies that the final disposition of a venomous reptile for which antivenin approved by the U.S. Food and Drug

Administration is not readily available must be euthanized unless the species is protected under federal law. Section 39 (page 28).

Felony taking of Venus flytrap; taking certain wild plants from another's land. New G.S. 14-129.3 provides that the unlawful taking of any Venus flytrap is a Class H felony. Amended G.S. 14-129 increases the Class 3 misdemeanor punishment for taking certain wild plants from another's land from a minimum fine of \$10 to \$75 and from a maximum fine of \$50 to \$175, and specifies that each plant taken constitutes a separate offense. The exemption of various counties from the provisions of this statute is deleted. The clerk of superior where a conviction occurs that involves any species that also appears in the North Carolina Protected Plants list created under Article 19B of G.S. Chapter 106 must report the conviction to the Plant Conservation Board, which may consider a civil penalty. All these provisions are applicable to offenses committed on or after December 1, 2014. Section 52 (pages 36-37).

Motor Vehicle Law

1. [S.L. 2014-58](#) (H 1025): **Ramp meter violation created.** See number 7 in “Criminal Law and Procedure” on page 3.
2. [S.L. 2014-108](#) (H 272): **Modification of site of Division of Motor Vehicles (DMV) hearing considering alleged ignition interlock violation.** See number 12 in “Criminal Law and Procedure” on page 6.
3. [S.L. 2014-100](#) (S 744): **DWI Sentences to be served through Statewide Misdemeanant Confinement Program.** Effective for sentences imposed on or after January 1, 2015, new G.S. 15A-1352(f) provides that a person sentenced to imprisonment of any duration for impaired driving under G.S. 20-138.1, other than imprisonment required as a condition of special probation, must be committed to the Statewide Misdemeanant Confinement Program. Under this program—established in 2011 pursuant to G.S. 148-32.1—the North Carolina Sheriffs’ Association identifies space in local confinement facilities that is available for housing misdemeanants. The program initially did not apply to sentences for misdemeanor impaired driving.

Amended G.S. 15A-1351(a), also effective for sentences imposed on or after January 1, 2015, requires that all imprisonment imposed as a condition of special probation for misdemeanor impaired driving under G.S. 20-138.1 be served in a designated local confinement or treatment facility, regardless of whether the imprisonment is for continuous or noncontinuous periods. Section 16C.1 (pages 155-59).
4. [S.L. 2014-114](#) (H 1145): **Mopeds required to be registered with Division of Motor Vehicles (DMV).** See number 13 in “Criminal Law and Procedure” on page 7.
5. [S.L. 2014-115](#) (H 1133): **Commercial driver’s license changes.** Conviction of certain serious traffic violations may lead to the disqualification of a commercial driver for a specified period of time. Amended G.S. 20-4.01(41a) includes within the definition of a “serious traffic violation” the unlawful use of a mobile telephone while operating a commercial motor vehicle. Section 28.3 (pages 18-19).

Amended G.S. 20-37.13 provides that the issuance of a commercial driver’s learner’s permit is a precondition to the initial issuance of a commercial driver’s license and also a precondition to the upgrade of a commercial driver’s license if the upgrade requires a skills test. Section 28.5 (page 19).

Federal regulations require that before obtaining a commercial driver’s license, a person who operates or expects to operate a commercial vehicle in interstate commerce must obtain a medical examiner’s certificate or certify that he or she is exempted from those requirements. New G.S. 20-37.13(h) requires DMV to promptly notify any driver who fails to meet the medical certification requirements. DMV must give the driver 60 days to provide the required documentation. If the driver fails to provide the required commercial driver’s license medical certification documentation within the period allowed, DMV must downgrade the commercial driver’s license to a class C regular driver’s license. Section 28.5 (page 19).

Civil Procedure and Civil Actions

1. [S.L. 2014-100](#) (S 744) (§§ 18B.6 and 18B.16): **Special Superior Court Judges; Business Court Changes; Three-Judge Panels.** See “Judicial Authority and Administration” on pages 20-21.
2. [S.L. 2014-110](#) (S 648) (§ 2.1): **Abusive Patent Assertions.** Creates the Abusive Patent Assertions Act, codified as Article 8 in Chapter 75. The Act makes it unlawful to make a bad-faith assertion of patent infringement and lists factors a court may consider in determining whether an assertion is or is not in bad faith. It provides that the target of a bad-faith assertion (or the Attorney General) may bring a civil action in superior court against the person making the assertion, and that a prevailing plaintiff may be awarded, where appropriate, equitable relief, damages, costs and fees including attorney fees, and certain exemplary damages. Under certain circumstances, the court is also authorized to require the defendant to post a bond up to \$500,000 pending the outcome of the litigation. The Act also sets parameters for joinder of interested parties and provides other procedural details. Effective August 6, 2014 and applies to causes of action commenced on or after that date and demands made on or after that date.
3. [S.L. 2014-115](#) (H 1133): **Demand for relief in negligence and punitive damages cases.** Amends Rule 8(a) of the Rules of Civil Procedure to require that, in negligence actions and civil actions seeking punitive damages, if the amount in question exceeds \$25,000 (was \$10,000), the pleading shall not specify the monetary demand, but instead shall state that the relief demanded is in excess of \$25,000 (was \$10,000). Effective August 11, 2014.

Civil, Estates, and Special Proceedings

1. **S.L. 2014-61 (H 1117): Joint Accounts.** Clarifies language in G.S. 54-109.58(d), G.S. 54B-129(a), and G.S. 54C-165(a) regarding the pledge of a joint account held by a credit union, savings and loan association or savings bank, respectively. Effective July 1, 2014, a pledge by one joint tenant of a joint account does not sever the joint account and is binding on all the other joint tenants unless there is a writing between the institution and the joint account holders that provides otherwise.

2. **S.L. 2014-100 (S 744): Status Reports Filed in Adult Guardianship Cases.** Effective October 1, 2014:

Contents of the Status Report. Adds a new subsection (a1) to G.S. 35A-1242 which lists what must be included in the status reports filed by all guardians of the person and general guardians. States that the following information *shall* be included in all status reports:

1. Summary of recent medical and dental examinations of the ward. If the guardian is unable to secure this information after diligent attempts, report to include an explanation and documentation of all actions to secure this information.
2. The guardian's performance of the duties set forth in Chapter 35A and in the clerk's order appointing a guardian.
3. The ward's residence, education, employment and rehabilitation.
4. The guardian's efforts to restore competency.
5. The guardian's efforts to seek alternatives to guardianship.
6. If a disinterested public agent (DPA) or corporation is guardian, the efforts to identify alternative guardians.
7. Recommendations for a more limited guardianship.
8. Any additional reports or information required by the clerk.

Adds a new subsection (a2) to G.S. 35A-1242 that allows the guardian to include any other information pertaining to the ward's best interests in the status report, even if not specifically required by the clerk.

Addressing the Contents of the Status Report. Adds a new subsection (d) to G.S. 35A-1242 explaining that the clerk or any interested party may file a motion in the cause to request modification of the order based on information in the status report.

Filing and Access to the Status Report. Changes the previous requirement which allowed the corporation or DPA to submit the status report to the designated agency or the clerk. Instead, it requires under amended subsection (a) of G.S. 35A-1242 that the guardian submit the report to the clerk and then submit a copy to the designated agency, if there is one. The primary filing of the status report is now with the clerk.

Status reports must be filed under oath or affirmation by the guardian that the report is accurate and complete. Under a revised subsection (b) of G.S. 35A-1242, status reports may also be filed with the signature of a disinterested, competent witness that the report is accurate and complete. If filed using this method instead of by the guardian, the status report should include a statement by the guardian that the report is complete and accurate and the full name, address and telephone number of the witness.

Adds new subsection (b1) of G.S. 35A-1242, which obligates the clerk to make status reports submitted by corporations and DPAs available to DHHS Division of Aging and Adult Services (the Division). The Division is required to use the reports for oversight of these guardians.

3. **S.L. 2014-100 (S 744): Conflicts of Interest Where DSS Appointed Guardian of Child and Parent.** Directs DHHS Division of Social Services to study conflicts of interest when county DSS is appointed as guardian of both a child and parent. Options to consider include:

1. Create firewalls within the department;
2. Create buddy systems between counties;
3. Refer the guardianship to a corporate guardian until the conflict is resolved;
4. State assume responsibility for the guardianship until the conflict is resolved; and
5. Legislation to allow the clerk to appoint another public agency or official as guardian other than the DSS Director in limited instances.

The report is due no later than February 1, 2015.

4. **S.L. 2014-100 (S 744): Public Guardianship.** Directs the Division and the North Carolina Administrative Office of the Courts to develop a plan to evaluate complaints related to wards under the care of public guardians. The complaint process should include a face-to-face observation of the ward, an interview with the ward, or both. An individual with experience in understanding the unique needs and abilities of the ward must conduct the interview.

Directs the Division to consult with clerks and others to develop a plan for transitioning a ward to a non-guardianship arrangement when an individual guardian of the person is unable or unwilling to serve. The plan must focus on ways to prevent the appointment of a public guardian.

These reports are to be submitted by October 1, 2014.

5. **S.L. 2014-100 (S 744): Name Change Notifications.** Effective July 1, 2014:

Amends G.S. 101-5(e) to state that the clerk shall send the order granting the name change to the Department of Public Safety, instead of the Division of Criminal Information at the State Bureau of Investigation.

Amends G.S. 101-5(g) to state that if the clerk sets aside a name change order on the basis of fraud or misrepresentation, the clerk shall notify the Department of Public Safety instead of the Division of Criminal Information in addition to the State Registrar of Vital Statistics.

6. **S.L. 2014-100 (S 744): Medicaid Estate Recovery.** Effective July 1, 2014, amends G.S. 108A-70.5 to state that any recovery by DHHS of Medicaid assistance may not include any amounts awarded to a recipient of compensation for eugenics asexualization and sterilization.

7. **S.L. 2014-107 (S 773): Videoconferencing between Treatment Facility and Courtroom for Certain Involuntary Commitment Proceedings.** Effective August 6, 2014, amends G.S. 122C-268(g) to allow interactive videoconferencing for hearings held in district court within 10 days of the date the respondent is taken into custody in involuntary commitment proceedings.

8. **S.L. 2014-107 (S 773): Wills Filed in Clerk's Office.** Pertains to the probate of a will that devises real property located outside of the county of probate. Effective August 6, 2014, amends G.S. 28A-2A-13(b) to allow the filing of a certified copy of the will and a certified copy of certificate of probate to be filed in the county where the real property is located. Also, amends G.S. 31-39(c) to require a certified copy of certificate of probate to be filed in the clerk's office in the county where the real property lies in addition to the certified copy of the will for the will to pass title to the real property against lien creditors and intestate heirs at law. The certified copy of the certificate of probate is to be issued by the clerk of superior court in the county where the will was probated.

9. **S.L. 2014-107 (S 773): Claims Related to an Action Pending Against the Decedent.** Effective August 6, 2014, amends G.S. 28A-19-1(c) to clarify the time frame for presenting a claim related to an action pending against the decedent at the time of the decedent's death. Any claim pending in the action against the decedent is presented upon filing of the motion for substitution of the personal

representative. The substitution or the motion for substitution must be filed prior to the deadline for presentation of claims under G.S. 28A-19-3, which typically is by the date specified in the general notice to creditors or 90 days after the delivery or mailing of the notice. The amendment states that timely filing such a motion does not extend the time for filing additional claims.

10. [S.L. 2014-107](#) (**S 773**): **Exemptions.** Effective August 6, 2014, deletes the form Notice of Petition to Set off Debtor's Exempt Property set forth in G.S. 1C-1603(a)(4) and requires the Administrative Office of the Courts to promulgate a new form that informs the debtor of certain rights set forth in new subsection G.S. 1C-1603(a)(5) including, but not limited to, the debtor's right to claim exempt property and the deadlines for submitting a motion or petition to claim exemptions. Furthermore, deletes the form Schedule of Debtor's Property and Request to Set Aside Exempt Property set forth in G.S. 1C-1603(c)(3) and requires the Administrative Office of the Courts to promulgate a new form in accordance with the guidelines set forth in new subsection G.S. 1C-1603(c1). The form must include a statement that North Carolina and federal law exempt property not included on the form. Debtor is no longer required to include a list of the debtor's debts and the names and addresses of the debtor's creditors as part of the statement filed by the debtor under G.S. 1C-1603(c).

11. [S.L. 2014-115](#) (**H 1133**): **45-Day Home Loan Notice in Foreclosure Cases.** Amends G.S. 53-244.111 to require 45-day foreclosure notices sent by a servicer prior to initiating a foreclosure action to include the address, telephone number, and other contact information for the State Home Foreclosure Prevention Project of the Housing Finance Agency. Effective as of August 11, 2014.

12. [S.L. 2014-115](#) (**H 1133**): **Financial Exploitation of Older Adults, New Special Proceeding.** Legislation in 2013 amended G.S. Chapter 108A to add a new Article 6A related to financial exploitation of disabled and older adults. [S.L. 2013-337.] The stated intent of the new Article is to "facilitate the collection of records needed to investigate and prosecute such incidents." The 2013 legislation had two key components: (i) *Reporting Mandate*: Financial institutions that have reasonable cause to believe that a disabled or older adult is the victim or target of exploitation must report it to law enforcement and, if the adult is disabled, to the county DSS. (ii) *Subpoena of Financial Records*: Authority for law enforcement and DSS (in the case of a disabled adult) to request and obtain a subpoena directing financial institutions to produce records. After enacted, it became clear that there was a problem with the drafting of this subpoena authority. Under Rule 45 of the NC Rules of Civil Procedure, a court may issue a subpoena only when there is an "action" pending. Because the investigatory subpoena envisioned by the 2013 legislation would not have required a petition for a case to be filed, the court would not have been able to connect the subpoena to an existing action. Thus, the court had no authority under the 2013 legislation to issue a valid subpoena.

In the 2014 session, the General Assembly amended G.S. 108A-116 to fix the issue from the 2013 legislation by creating a new special proceeding in cases of suspected financial exploitation of a disabled adult or older adult. Effective August 11, 2014, the new action has the following characteristics:

- Allows an investigating entity such as Adult Protective Services or law enforcement to file a petition in district court for a subpoena of a financial institution's records.
- Matter is to be treated as a special proceeding pursuant to G.S. 7A-246.
- Filed in the county of residence of the adult.
- Court is required to hear the case within two business days after the petition is filed.
- Outlines the procedure and basis for the financial institution to challenge the subpoena by filing a motion to quash or modify.

- The petition and any other documents filed under this subsection are to be maintained separately from other records and they are not subject to public inspection. They may be examined only by an order of the court.

13. **S.L. 2014-115 (H 1133): Creditors Rights and Tenancy by the Entirety.** Adds new G.S. 39-13.7 which provides that real property held by husband and wife as tenants by the entirety and conveyed to a joint or separate revocable or irrevocable trusts has immunity from claims of creditors to the same extent if they held the property as tenancy by the entirety in their individual names, provided that they remain married, the real property is held in the trust(s), and the spouses remain the beneficial owners of the real property.

Juvenile Delinquency Law

1. **[S.L. 2014-119 \(H 369\)](#) (Criminal Law Changes): Child Sex Abuse Prevention Study; Remote Testimony by Forensic and Chemical Analysts.** This act makes various criminal law changes and includes the following sections that impact juvenile proceedings:

- Section 4(a) requires the Human Trafficking Commission to study the prevention of child sexual abuse in North Carolina. As part of the study, the Commission must examine age-appropriate curricula for elementary school children on the subject of sexual abuse that could be included in the Basic Education Program for public schools. A final report, including any proposed legislation, must be submitted to the 2015 General Assembly.
- Section 8(a) creates new G.S. 15A-1225.3, which allows remote testimony by a forensic analyst in criminal proceedings. A “criminal proceeding,” as defined by this section, includes juvenile delinquency proceedings under Subchapter II of Chapter 7B. This section is effective September 1, 2014, and applies to testimony admitted on or after that date.
- Section 8(b) amends G.S. 20-139.1 to add new subsection (c5), which allows remote testimony by a chemical analyst under G.S. 20-139.1(c1), in all administrative hearings, and in any court. This section is effective September 1, 2014, and applies to testimony admitted on or after that date.
- Section 9(a) amends G.S. 14-269.2(g) to permit detention officers, who are employed and authorized by the sheriff, to carry firearms on campus or other educational property when discharging official duties. This section is effective December 1, 2014, and applies to offenses committed on or after that date.

For the complete list of criminal law changes enacted by this session law, see the legislative summary under number 15 in “Criminal Law and Procedure” on pages 8-9.

2. **[S.L. 2014-100 \(S 744\)](#): Secure Custody Orders.** Section 17.1(t) of the Appropriations Act amends G.S. 7B-1904 to provide that a message of “the Department of Public Safety” stating that a juvenile petition and secure custody order have been filed against a particular juvenile is authority for a law enforcement officer to detain the juvenile, until a copy of the juvenile petition and secure custody order can be forwarded to the juvenile detention facility. Previously, the statute provided that a message of “the Division of Criminal Information, State Bureau of Investigation” gave such authority.

Child Welfare Law

1. **S.L. 2014-16 (H 1103): Pre-adjudication hearing.** Effective October 1, 2014, this session law adds G.S. 7B-800.1(5a), which requires the court to consider at the pre-adjudication hearing whether a petition for abuse, neglect, or dependency has been properly verified so as to invoke subject matter jurisdiction.
2. **S.L. 2014-115 (H 1133): Technical Corrections, Payment for Parent GAL.** Section 21 (page 13 of the pdf version) amends G.S. 7B-603(b) to expressly state IDS pays the cost of a guardian ad litem appointed to a respondent parent in an abuse, neglect, or dependency action. Prior to this correction, payment by IDS for a GAL appointed to a respondent parent appeared only at G.S. 7B-1101.1(f), which applied to termination of parental rights actions.
3. **S.L. 2014-100 (S 744): Appropriations Act.** Section XII Part C addresses the Department of Health and Human Services Division of Social Services. The following sections are part of the “Child Protective Services Improvement Initiative.”
 - Section 12C.1(b) found at page 72 of the pdf version provides additional funding for child protective services workers to decrease the average caseload per worker to a recommended 10 families and is effective October 1, 2014.
 - Section 12C.1(d) found at page 73 of the pdf version provides funding for 9 positions with the Division of Social Services that will provide oversight of county departments of social services through monitoring, training, and technical assistance regarding child protective services.
 - Section 12C.1(f) found at page 73 of the pdf version provides funding for the Division of Social Services to contract for an independent evaluation of the state child protective services system with recommendations to be provided regarding:
 - the administrative structure of the system,
 - performances, monitoring, and oversight of the county departments,
 - caseload sizes and case worker turnover, and
 - adequacy of funding.A report shall be submitted to Joint Legislative Oversight Committee by January 1, 2016
 - Section 12C.1(g) found on pages 73-74 of the pdf version requires the Division of Social Services to conduct a conflict of interest study when a county department of social services is involved in both a child protective case and public guardianship case involving the parent, custodian, guardian, or caretaker of the child at issue in the child protective case. The Division of Social Services is directed to consider
 - Internal firewalls within a county DSS to prevent information sharing
 - The creation of a “buddy system” with a neighboring county DSS
 - Referral of the guardianship to a corporate guardian
 - NC DHHS taking responsibility for either the guardianship or child protective case
 - Legislation identifying other public agencies or officials to serve as public guardianA final report of the study must be submitted to the Senate Appropriations Committee on Health and Human Services and the Fiscal Research Division by February 1, 2015.

Family Law

S.L. 2014-77 (S 794): Presumptive child support guidelines to include retroactive support obligation.

G.S. 50-13.4(c1) requires the Conference of Chief District Court Judges to prescribe statewide presumptive guidelines to compute a parent's child support obligation and to review those guidelines at least once every four years. This session law, effective July 22, 2014, amends the statute to clarify that the Conference of Chief District Court Judges has the authority to adopt guidelines to determine the amount of support a parent must pay for a support obligation incurred before a court action is filed as well as the amount a parent must pay for future support.

Judicial Authority and Administration

1. [S.L. 2014-100 \(S 744\)](#): **2014 Appropriations Act**. In addition to the appropriations for fiscal 2014-15 and the various criminal law changes discussed above, the budget act makes several significant changes related to court administration and authority. Those provisions are:

Special superior court judges; business court (Section 18B.6 of the act). The state currently has 15 special superior court judgeships, appointed by the governor for five-year terms. The budget act provides that two of those judgeships are to be abolished when the incumbents leave office and two others are to be converted to business court judgeships. Additionally, the selection process is changed for all special judgeships.

The two judgeships whose terms expire on April 29, 2015 (Inman) and October 20, 2015 (Trawick) will become new business court judgeships, expanding that court from three to five judges. The conversions will take place whenever the incumbents retire or resign or their terms expire, whichever occurs first. The legislature cannot itself designate the judgeships for the business court because the state constitution specifies that the chief justice assigns superior court judges. Consequently, the act provides that the governor is to consult with the chief justice to assure that the nominees have the requisite experience for the business court, and the act “requests” the chief justice to designate the judges as business court judges.

The two judgeships whose current terms expire on December 31, 2017 (Hill and Young) are to be abolished when those incumbents retire, resign or their terms expire.

For all special judgeships the act retains five-year terms and retains the unusual feature that the terms begin when the new judge takes office (thus explaining the odd expiration dates). In the past the governor has appointed special judges with no legislative involvement in the process, but the act adds legislative confirmation of the governor’s selections. The governor will be required to nominate a candidate within 90 days of a vacancy or the expiration of the term, and if the governor fails to nominate in time the speaker and president pro tem get to jointly nominate. If a nomination by the governor fails, the governor gets 45 days to make another choice. (The 90-day rule also will eliminate the common practice of past governors to allow special judges to hold over for some time after the expiration of their terms.)

Other changes in the business court were enacted in S.L. 2014-102 (S 853), summarized below.

Three-judge panels for specified civil law constitutional challenges; appeals (Section 18B.16 of the act). The budget act establishes new procedures and a new court structure to handle certain challenges to the constitutionality of state laws. For facial challenges to the constitutionality of civil statutes — not “as applied” challenges and not challenges to criminal statutes and not taxpayer constitutional challenges under GS 105-241.17 — the chief justice is to appoint a three-judge panel of resident superior court judges (not special judges), with one judge each from different parts of the state as specified in the act. The panel will sit in Wake County. The constitutional challenge may arise in the complaint or in a responsive pleading. Although most such challenges are likely to arise in cases filed in superior court, the act applies to facial constitutional challenges made in district court as well. If there are issues in the case other than the constitutional challenge, those are to be resolved by the original single trial judge before the case goes to the three-judge panel. The act also provides for direct appeals to the supreme court from the decision of the three-judge panel.

The budget act also provides for immediate interlocutory appeals of decisions of trial judges in civil cases, other than those heard by three-judge panels, that have the effect of enjoining the enforcement of a legislative act, when the state or a local government is a party to the action. Although the heading to the new section indicates that it is meant only for as-applied constitutional challenges, the wording of the body of the section omits the word “constitutional,” perhaps allowing

its application in other challenges to state laws. These interlocutory appeals are to the court of appeals rather than the supreme court.

Attorney General representation of state; approval of settlements (Section 17.3A of the act).

The budget act amends G.S. 120-32.6 to state that when the validity of a legislative act is challenged and the General Assembly hires outside counsel to represent it, that outside lawyer is to be the lead counsel and the Attorney General is to cooperate with them. The act also amends G.S. 114-2.2 and -2.4 to require that consent judgments and settlements be approved by the agency head (not just the Attorney General) when the department or agency or officer is a named party in the lawsuit.

Wilson trial court administrator (Section 18B.13 of the act). It's uncommon for the legislature to act on specific individual positions within the court system, but the budget act directs the Administrative Office of the Courts to maintain the trial court administrator position for superior court districts 7B and C (Wilson County) and to assure that the position remains filled through the 2014-15 fiscal year.

2. **S.L. 2014-102 (S 853): Business court changes.** As discussed above, the budget act converts two special superior court judgeships to business court judgeships when the incumbents' terms expire or they leave office early. Session Law 2014-102 addresses the scope and procedure of the business court, with its changes effective October 1, 2014.

The statute on designation of complex business cases is revised to distinguish between cases that may be designated by the parties and those that are considered mandatory complex business cases. The former category is written to include the current list of complex business cases, updated, with a few additions. Parties now will be able to designate as disputes over trade secrets as complex business cases and also contract disputes of a million dollars or more involving corporate parties. The category of mandatory complex business cases will include corporate contract disputes of five million dollars or more; constitutional challenges to tax statutes; and pole attachment disputes designated by the plaintiff. The act specifies that personal injury torts may not be designated as complex business cases.

Business court judges are directed to issue written opinions for orders finally disposing of complex business cases. Appeals of complex business cases now will go directly to the supreme court, as will appealable interlocutory orders from the business court.

The additional filing fee for complex business cases is raised from \$1,000 to \$1,100.

The act also establishes a subcommittee on business court modernization within the Joint Legislative Economic Development and Global Engagement Oversight Committee. The subcommittee is to have at least six members, equally from the House and Senate, and is to study implementation of the act and modernization of the handling of complex business cases.

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