

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

**SESSION LAW 2018-47
SENATE BILL 768**

AN ACT TO UPDATE THE GENERAL STATUTES OF NORTH CAROLINA WITH PEOPLE FIRST LANGUAGE BY CHANGING THE PHRASE "MENTAL RETARDATION" TO "INTELLECTUAL DISABILITY" IN CERTAIN SECTIONS AND TO MAKE OTHER PEOPLE FIRST LANGUAGE AMENDMENTS AND TECHNICAL AMENDMENTS IN THOSE SECTIONS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 1-301.2 reads as rewritten:

"§ 1-301.2. Transfer or appeal of special proceedings; exceptions.

...
(g) Exception for Incompetency and Foreclosure Proceedings and Proceedings to Permit Sterilization for Medical Necessity. –

- (1) Proceedings for adjudication of incompetency or restoration of competency under Chapter 35A of the General Statutes, or proceedings to determine whether a guardian may consent to the sterilization of a ~~mentally ill or mentally retarded ward~~ ward with a mental illness or intellectual disability under G.S. 35A-1245, shall not be transferred even if an issue of fact, an equitable defense, or a request for equitable relief is raised. Appeals from orders entered in these proceedings are governed by Chapter 35A of the General Statutes to the extent that the provisions of that Chapter conflict with this section.
- (2) Foreclosure proceedings under Article 2A of Chapter 45 of the General Statutes shall not be transferred even if an issue of fact, an equitable defense, or a request for equitable relief is raised. Equitable issues may be raised only as provided in G.S. 45-21.34. Appeals from orders entered in these proceedings are governed by Article 2A of Chapter 45 of the General Statutes to the extent that the provisions of that Article conflict with this section.

...."

SECTION 1.(b) G.S. 35A-1101 reads as rewritten:

"§ 35A-1101. Definitions.

~~When used in this Subchapter:~~ The following definitions apply in this Subchapter:

- (1) ~~"Autism" means a~~ Autism – A physical disorder of the brain which causes disturbances in the developmental rate of physical, social, and language skills; abnormal responses to sensations; absence of or delay in speech or language; or abnormal ways of relating to people, objects, and events. Autism occurs sometimes by itself and sometimes in conjunction with other brain-functioning disorders.
- (2) ~~"Cerebral palsy" means a~~ Cerebral palsy. – A muscle dysfunction, characterized by impairment of movement, often combined with speech impairment, and caused by abnormality of or damage to the brain.



- (3) ~~"Clerk" means the Clerk.~~ – The clerk of superior court.
- (4) ~~"Designated agency" means the Designated agency.~~ – The State or local human services agency designated by the clerk in the clerk's order to prepare, cause to be prepared, or assemble a multidisciplinary evaluation and to perform other functions as the clerk may order. A designated agency includes, without limitation, State, local, regional, or area mental health, ~~mental retardation,~~ intellectual disability, vocational rehabilitation, public health, social service, and developmental disabilities agencies, and diagnostic evaluation centers.
- (5) ~~"Epilepsy" means a Epilepsy.~~ – A group of neurological conditions characterized by abnormal electrical-chemical discharge in the brain. This discharge is manifested in various forms of physical activity called seizures, which range from momentary lapses of consciousness to convulsive movements.
- (6) ~~"Guardian ad litem" means a Guardian ad litem.~~ – A guardian appointed pursuant to G.S. 1A-1, Rule 17, Rules of Civil Procedure.
- (7) ~~"Incompetent adult" means an Incompetent adult.~~ – An adult or emancipated minor who lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, ~~mental retardation,~~ intellectual disability, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.
- (8) ~~"Incompetent child" means a Incompetent child.~~ – A minor who is at least 17 1/2 years of age and who, other than by reason of minority, lacks sufficient capacity to make or communicate important decisions concerning the child's person, family, or property whether the lack of capacity is due to mental illness, ~~mental retardation,~~ intellectual disability, epilepsy, cerebral palsy, autism, inebriety, disease, injury, or similar cause or condition.
- (9) ~~"Indigent" means unable Indigent.~~ – Unable to pay for legal representation and other necessary expenses of a proceeding brought under this Subchapter.
- (10) ~~"Inebriety" means the Inebriety.~~ – The habitual use of alcohol or drugs rendering a person incompetent to transact ordinary business concerning the person's estate, dangerous to person or property, cruel and intolerable to family, or unable to provide for family.
- (10a) Intellectual disability. – Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.
- (11) ~~"Interim guardian" means a Interim guardian.~~ – A guardian, appointed prior to adjudication of incompetence and for a temporary period, for a person who requires immediate intervention to address conditions that constitute imminent or foreseeable risk of harm to the person's physical well-being or to the person's estate.
- (12) ~~"Mental illness" means an Mental illness.~~ – An illness that so lessens the capacity of a person to use self-control, judgment, and discretion in the conduct of the person's affairs and social relations as to make it necessary or advisable for the person to be under treatment, care, supervision, guidance, or control. The term "mental illness" encompasses "mental disease", "mental disorder", "~~lunacy~~", "unsoundness of mind", and "insanity".
- (13) ~~"Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.~~

- (14) ~~"Multidisciplinary evaluation" means an~~ Multidisciplinary evaluation. – An evaluation that contains current medical, psychological, and social work evaluations as directed by the clerk and that may include current evaluations by professionals in other disciplines, including without limitation education, vocational rehabilitation, occupational therapy, vocational therapy, psychiatry, speech-and-hearing, and communications disorders. The evaluation is current if made not more than one year from the date on which it is presented to or considered by the court. The evaluation shall set forth the nature and extent of the disability and recommend a guardianship plan and program.
- (15) ~~"Respondent" means a~~ Respondent. – A person who is alleged to be incompetent in a proceeding under this Subchapter.
- (16) ~~"Treatment facility" has the~~ Treatment facility. – ~~Has the~~ same meaning as "facility" in G.S. 122C-3(14), and includes group homes, halfway houses, and other community-based residential facilities.
- (17) ~~"Ward" means a~~ Ward. – A person who has been adjudicated incompetent or an adult or minor for whom a guardian has been appointed by a court of competent jurisdiction."

SECTION 1.(c) G.S. 35A-1202 reads as rewritten:

"§ 35A-1202. Definitions.

~~When used in this Subchapter, unless a contrary intent is indicated or the context requires otherwise:~~ The following definitions apply in this Subchapter:

- (1) ~~"Accounting" means the~~ Accounting. – The financial or status reports filed with the clerk, designated agency, respondent, or other person or party with whom ~~such the~~ reports are required to be filed.
- (2) ~~"Clerk" means the~~ Clerk. – The clerk of superior court.
- (3) ~~"Designated agency" means the~~ Designated agency. – The State or local human services agency designated by the clerk in an order to prepare, cause to be prepared, or assemble a multidisciplinary evaluation and to perform other functions as the clerk may order. A designated agency includes, without limitation, State, local, ~~regional~~ regional, or area mental health, ~~mental retardation,~~ intellectual disability, vocational rehabilitation, public health, social service, and developmental disabilities agencies, and diagnostic evaluation centers.
- (4) ~~"Disinterested public agent" means the~~ Disinterested public agent. – The director or assistant directors of a county department of social services. Except as provided in G.S. 35A-1213(f), the fact that a disinterested public agent provides financial assistance, services, or treatment to a ward does not disqualify that person from being appointed as guardian.
- (5) ~~"Estate" means any~~ Estate. – Any interest in real property, choses in action, intangible personal property, and tangible personal property, and includes any interest in joint accounts or jointly held property.
- (6) ~~"Financial report" means the~~ Financial report. – The report filed by the guardian concerning all financial transactions, including receipts and expenditures of the ward's money, sale of the ward's property, or other transactions involving the ward's property.
- (7) ~~"General guardian" means a~~ General guardian. – A guardian of both the estate and the person.
- (8) ~~"Guardian ad litem" means a~~ Guardian ad litem. – A guardian appointed pursuant to G.S. 1A-1, Rule 17, Rules of Civil Procedure.

- (9) ~~"Guardian of the estate" means a~~ Guardian of the estate. – A guardian appointed solely for the purpose of managing the property, estate, and business affairs of a ward.
- (10) ~~"Guardian of the person" means a~~ Guardian of the person. – A guardian appointed solely for the purpose of performing duties relating to the care, custody, and control of a ward.
- (11) ~~"Incompetent person" means a~~ Incompetent person. – A person who has been adjudicated to be an "incompetent adult" or "incompetent child" as defined in G.S. 35A-1101(7) or (8).
- (12) ~~"Minor" means a~~ Minor. – A person who is under the age of 18, is not married, and has not been legally emancipated.
- (13) ~~"Multidisciplinary evaluation" means an~~ Multidisciplinary evaluation. – An evaluation that contains current medical, psychological, and social work evaluations as directed by the clerk and that may contain current evaluations by professionals in other disciplines, including without limitation education, vocational rehabilitation, occupational therapy, vocational therapy, psychiatry, speech-and-hearing, and communications disorders. The evaluation is current if made not more than one year from the date on which it is presented to or considered by the court. The evaluation shall set forth the nature and extent of the disability and recommend a guardianship plan and program.
- (14) ~~"Status report" means the~~ Status report. – The report required by G.S. 35A-1242 to be filed by the general guardian or guardian of the person.
- (15) ~~"Ward" means a~~ Ward. – A person who has been adjudicated incompetent or an adult or minor for whom a guardian has been appointed by a court of competent jurisdiction."

SECTION 1.(d) G.S. 35A-1241 reads as rewritten:

"§ 35A-1241. Powers and duties of guardian of the person.

(a) To the extent that it is not inconsistent with the terms of any order of the clerk or any other court of competent jurisdiction, a guardian of the person has the following powers and duties:

- (1) The guardian of the person is entitled to custody of the person of the guardian's ward and shall make provision for the ward's care, comfort, and maintenance, and shall, as appropriate to the ward's needs, arrange for the ward's training, education, employment, ~~rehabilitation~~ rehabilitation, or habilitation. The guardian of the person shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects that are with the ward.
- (2) The guardian of the person may establish the ward's place of abode ~~within or without~~ inside or outside this State. In arranging for a place of abode, the guardian of the person shall give preference to places ~~within~~ inside this State over places ~~not in~~ outside this State if in-State and out-of-State places are substantially equivalent. The guardian also shall give preference to places that are not treatment facilities. If the only available and appropriate places of domicile are treatment facilities, the guardian shall give preference to community-based treatment facilities, such as group homes or nursing homes, over treatment facilities that are not community-based.
- (3) The guardian of the person may give any consent or approval that may be necessary to enable the ward to receive medical, legal, psychological, or other professional care, counsel, treatment, or ~~service; provided that, if service.~~ service. If the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the

authority granted in the health care power of attorney unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208. The guardian shall not, however, consent to the sterilization of a ~~mentally ill or mentally retarded ward~~ ward with a mental illness or intellectual disability unless the guardian obtains an order from the clerk in accordance with G.S. 35A-1245. The guardian of the person may give any other consent or approval on the ward's behalf that may be required or in the ward's best interest. The guardian may petition the clerk for the clerk's concurrence in the consent or approval.

(b) A guardian of the person is entitled to be reimbursed out of the ward's estate for reasonable and proper expenditures incurred in the performance of ~~his~~ the guardian's duties as guardian of the ward's person.

(c) A guardian of the ~~person, if he~~ person who has acted within the limits imposed ~~on him~~ by this Article or the order of appointment or ~~both, shall not be~~ both is not liable for damages to the ward or the ward's estate, merely by reason of the guardian's:

- (1) Authorizing or giving any consent or approval necessary to enable the ward to receive legal, psychological, or other professional care, counsel, treatment, or service, in a situation where the damages result from the negligence or other acts of a third person; or
- (2) Authorizing medical treatment or surgery for ~~his~~ the ward, if the guardian acted in good faith and was not negligent."

SECTION 1.(e) G.S. 35A-1245 reads as rewritten:

"§ 35A-1245. Procedure to permit the sterilization of a ~~mentally ill or a mentally retarded ward~~ ward with a mental illness or intellectual disability in the case of medical necessity.

(a) A guardian of the person shall not consent to the sterilization of a ~~mentally ill or mentally retarded ward~~ ward with a mental illness or intellectual disability unless an order from the clerk has been obtained in accordance with this section.

(b) If a ~~mentally ill or mentally retarded ward~~ ward with a mental illness or intellectual disability needs to undergo a medical procedure that would result in sterilization, the ward's guardian shall petition the clerk for an order to permit the guardian to consent to the procedure. The petition shall contain all of the following:

- (1) A sworn statement from a physician licensed in this State who has examined the ward that the proposed procedure is medically necessary and not for the sole purpose of sterilization or for the purpose of hygiene or convenience.
- (2) The name and address of the physician who will perform the procedure.
- (3) A sworn statement from a psychiatrist or psychologist licensed in this State who has examined the ward as to whether the ~~mentally ill or mentally retarded ward~~ ward with a mental illness or intellectual disability is able to comprehend the nature of the proposed procedure and its consequences and provide an informed consent to the procedure.
- (4) If the ward is able to comprehend the nature of the proposed procedure and its consequences, the sworn consent of the ward to the procedure.

(c) A copy of the petition shall be served on the ward personally. If the ward is unable to comprehend the nature of the proposed procedure and its consequences and is unable to provide an informed consent, the clerk shall appoint an attorney to represent the ward in accordance with rules adopted by the Office of Indigent Defense Services.

(d) Should the ward or the ward's attorney request a hearing, a hearing shall be held. Otherwise, the clerk may enter an order without the appearance of witnesses. If a hearing is held, the guardian and the ward may present evidence.

(e) If the clerk finds all of the following, the clerk shall enter an order permitting the guardian to consent to the proposed procedure:

- (1) The ward is capable of comprehending the procedure and its consequences and has consented to the procedure, or the ward is unable to comprehend the procedure and its consequences.
- (2) The procedure is medically necessary and is not solely for the purpose of sterilization or for hygiene or convenience.

(f) The guardian or the ward, the ward's attorney, or any other interested party may appeal the clerk's order to the superior court in accordance with G.S. 1-301.2(e)."

SECTION 1.(f) G.S. 90-275 reads as rewritten:

"§ 90-275. Article does not affect duty of guardian to obtain order permitting guardian to consent to sterilization of a ~~mentally ill or mentally retarded ward.~~ward with a mental illness or intellectual disability.

Nothing in this Article ~~shall be deemed to affect~~affects the provisions of G.S. 35A-1245."

SECTION 2. G.S. 7B-1111 reads as rewritten:

"§ 7B-1111. Grounds for terminating parental rights.

(a) The court may terminate the parental rights upon a finding of one or more of the following:

- (1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.
- (2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile. ~~Provided, however, that no parental rights~~No parental rights, however, shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.
- (3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the ~~parent, for a continuous period of six months next preceding the filing of the petition or motion,~~parent has for a continuous period of six months immediately preceding the filing of the petition or motion willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.
- (4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition or motion willfully failed without justification to pay for the care, support, and education of the juvenile, as required by ~~said the~~ decree or custody agreement.
- (5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition or motion to terminate parental rights, done any of the following:
 - a. Filed an affidavit of paternity in a central registry maintained by the Department of Health and Human ~~Services; provided, the Services.~~The petitioner or movant shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and the Department's certified reply shall be submitted to and considered by the court.

- b. Legitimated the juvenile pursuant to provisions of G.S. 49-10, G.S. 49-12.1, or filed a petition for this specific purpose.
 - c. Legitimated the juvenile by marriage to the mother of the juvenile.
 - d. Provided substantial financial support or consistent care with respect to the juvenile and mother.
 - e. Established paternity through G.S. 49-14, 110-132, 130A-101, 130A-118, or other judicial proceeding.
- (6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that ~~such~~ the incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, ~~mental retardation,~~ intellectual disability, mental illness, organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the juvenile and the parent lacks an appropriate alternative child care arrangement.

...

(b) The burden in ~~such these~~ proceedings ~~shall be upon~~ is on the petitioner or movant to prove the facts justifying ~~such the~~ termination by clear and convincing evidence."

SECTION 3.(a) G.S. 8C-1, Rule 616, reads as rewritten:

"Rule 616. Alternative testimony of witnesses with ~~developmental disabilities or mental retardation~~ an intellectual or developmental disability in civil cases and special proceedings.

(a) Definitions. – The following definitions apply to this section:

- (1) The definitions set out in G.S. 122C-3.
- (2) ~~"Remote testimony" means a Remote testimony.~~ – A method by which a witness testifies outside of an open forum and outside of the physical presence of a party or parties.

(b) Remote Testimony Authorized. – ~~A person with a developmental disability or a person with mental retardation~~ An individual with an intellectual or developmental disability who is competent to testify may testify by remote testimony in a civil proceeding or special proceeding if the court determines by clear and convincing evidence that the witness would suffer serious emotional distress from testifying in the presence of a named party or parties or from testifying in an open forum and that the ability of the witness to communicate with the trier of fact would be impaired by testifying in the presence of a named party or parties or from testifying in an open forum.

...

(f) Nonexclusive Procedure and Standard. – Nothing in this section ~~shall prohibit~~ prohibits the use or application of any other method or procedure authorized or required by law for the introduction into evidence of statements or testimony of ~~a person with a developmental disability or a person with mental retardation~~ an individual with an intellectual or developmental disability."

SECTION 3.(b) G.S. 15A-1225.2 reads as rewritten:

"§ 15A-1225.2. Witnesses with ~~developmental disabilities or mental retardation;~~ an intellectual or developmental disability; remote testimony.

(a) Definitions. – The following definitions apply to this section:

- (1) The definitions set out in G.S. 122C-3.
- (2) ~~"Remote testimony" means a Remote testimony.~~ – A method by which a witness testifies outside of an open forum and outside of the physical presence of a party or parties.

(b) Remote Testimony Authorized. – ~~A person with a developmental disability or a person with mental retardation~~ An individual with an intellectual or developmental disability who is competent to testify may testify by remote testimony in a prosecution of a person charged with violating a criminal law of this State and in any hearing or proceeding conducted under Subchapter II of Chapter 7B of the General Statutes where a juvenile is alleged to have committed an offense that would be a criminal offense if committed by an adult if the court determines by clear and convincing evidence that the witness would suffer serious emotional distress from testifying in the presence of the defendant and that the ability of the witness to communicate with the trier of fact would be impaired by testifying in the presence of the defendant.

...

(e) Testimony. – The method of remote testimony shall allow the trier of fact and all parties to observe the demeanor of the witness as the witness testifies in a similar manner as if the witness were testifying in the open forum. The court shall ensure that the counsel for all parties, except a pro se defendant, is physically present where the witness testifies and has a full and fair opportunity for examination and cross-examination of the witness. The court shall ensure that the defendant or juvenile respondent has the ability to communicate privately with defense counsel during the remote testimony. A party may waive the right to have counsel physically present where the witness testifies. Nothing in this section ~~shall be construed to limit~~ limits the provisions of G.S. 15A-1225.

(f) Nonexclusive Procedure and Standard. – Nothing in this section ~~shall prohibit~~ prohibits the use or application of any other method or procedure authorized or required by law for the introduction into evidence of statements or testimony of ~~a person with a developmental disability or a person with mental retardation~~ an individual with an intellectual or developmental disability."

SECTION 4.(a) G.S. 14-27.20 reads as rewritten:

"§ 14-27.20. Definitions.

As used in this Article, unless the context requires otherwise: The following definitions apply in this Article:

- (1) ~~"Mentally disabled" means (i) a victim who suffers from mental retardation, or (ii) a victim who suffers from a mental disorder, either of which temporarily or permanently renders the victim substantially incapable of appraising the nature of his or her conduct, or of resisting the act of vaginal intercourse or a sexual act, or of communicating unwillingness to submit to the act of vaginal intercourse or a sexual act.~~
- (2) ~~"Mentally incapacitated" means a~~ Mentally incapacitated. – A victim who due to (i) any act committed upon the victim or (ii) a poisonous or controlled substance provided to the victim without the knowledge or consent of the victim is rendered substantially incapable of either appraising the nature of his or her conduct, or resisting the act of vaginal intercourse or a sexual act.
- (2a) Person who has a mental disability. – A victim who has an intellectual disability or a mental disorder that temporarily or permanently renders the victim substantially incapable of appraising the nature of his or her conduct, or of resisting the act of vaginal intercourse or a sexual act, or of communicating unwillingness to submit to the act of vaginal intercourse or a sexual act.
- (3) ~~"Physically helpless" means (i) a victim who is unconscious; or (ii) a~~ Physically helpless. – Any of the following:
 - a. A victim who is unconscious.
 - b. A victim who is physically unable to resist an act of vaginal intercourse or a sexual act or communicate unwillingness to submit to an act of vaginal intercourse or a sexual act.

- (4) ~~"Sexual act" means cunnilingus, Sexual act. – Cunnilingus, fellatio, analingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person's body: provided, that it shall be body. It is an affirmative defense that the penetration was for accepted medical purposes.~~
- (5) ~~"Sexual contact" means (i) touching Sexual contact. – Any of the following:~~
- a. ~~Touching the sexual organ, anus, breast, groin, or buttocks of any person, (ii) a person.~~
 - b. ~~A person touching another person with their own sexual organ, anus, breast, groin, or buttocks, or (iii) a buttocks.~~
 - c. ~~A person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person.~~
- (6) ~~"Touching" as Touching. – As used in subdivision (5) of this section, means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim."~~

SECTION 4.(b) G.S. 14-27.22 reads as rewritten:

"§ 14-27.22. Second-degree forcible rape.

(a) A person is guilty of second-degree forcible rape if the person engages in vaginal intercourse with another person:

- (1) By force and against the will of the other person; or
- (2) ~~Who is mentally disabled, mentally incapacitated, Who has a mental disability or who is mentally incapacitated~~ or physically helpless, and the person performing the act knows or should reasonably know the other person is ~~mentally disabled, mentally incapacitated, has a mental disability or is mentally incapacitated~~ or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class C felony.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child conceived during the commission of the rape, nor ~~shall does~~ the person have any rights related to the child under Chapter 48 of the General Statutes or Subchapter ~~4-I~~ of Chapter 7B of the General Statutes."

SECTION 4.(c) G.S. 14-27.27 reads as rewritten:

"§ 14-27.27. Second-degree forcible sexual offense.

(a) A person is guilty of second degree forcible sexual offense if the person engages in a sexual act with another person:

- (1) By force and against the will of the other person; or
- (2) ~~Who is mentally disabled, mentally incapacitated, Who has a mental disability or who is mentally incapacitated~~ or physically helpless, and the person performing the act knows or should reasonably know that the other person is ~~mentally disabled, mentally incapacitated, has a mental disability or is mentally incapacitated~~ or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class C felony."

SECTION 4.(d) G.S. 14-27.33 reads as rewritten:

"§ 14-27.33. Sexual battery.

(a) A person is guilty of sexual battery if the person, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person:

- (1) By force and against the will of the other person; or
- (2) ~~Who is mentally disabled, mentally incapacitated, Who has a mental disability or who is mentally incapacitated~~ or physically helpless, and the person

performing the act knows or should reasonably know that the other person is ~~mentally disabled, mentally incapacitated,~~ has a mental disability or is mentally incapacitated or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class A1 misdemeanor."

SECTION 4.(e) G.S. 14-205.1 reads as rewritten:

"§ 14-205.1. Solicitation of prostitution.

(a) Except as otherwise provided in this section, any person who solicits another for the purpose of prostitution is guilty of a Class 1 misdemeanor for a first offense and a Class H felony for a second or subsequent offense. Any person 18 years of age or older who willfully solicits a minor for the purpose of prostitution is guilty of a Class G felony. Any person who willfully solicits a person who ~~is severely or profoundly mentally disabled~~ has a severe or profound mental disability for the purpose of prostitution is guilty of a Class E felony. Punishment under this section may include participation in a program devised for the education and prevention of sexual exploitation (i.e. "John School"), where available. A person who violates this subsection ~~shall not be~~ is not eligible for a disposition of prayer for judgment continued under any circumstances.

(b) Immunity From Prosecution for Minors. – Notwithstanding any other provision of this section, if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this section is a minor who is soliciting as a prostitute, that person shall be immune from prosecution under this section and instead shall be taken into temporary protective custody as an undisciplined juvenile pursuant to Article 19 of Chapter 7B of the General Statutes. Pursuant to ~~the provisions of~~ G.S. 7B-301, a law enforcement officer who takes a minor into custody under this section shall immediately report an allegation of a violation of G.S. 14-43.11 and G.S. 14-43.13 to the director of the department of social services in the county where the minor resides or is found, as appropriate, which shall commence an initial investigation into child abuse or child neglect within 24 hours pursuant to G.S. 7B-301 and G.S. 7B-302."

SECTION 4.(f) G.S. 14-205.2 reads as rewritten:

"§ 14-205.2. Patronizing a prostitute.

(a) Any person who willfully performs any of the following acts with a person not his or her spouse commits the offense of patronizing a prostitute:

- (1) Engages in vaginal intercourse, any sexual act as defined in G.S. 14-27.20, or any sexual contact as defined in G.S. 14-27.20, for the purpose of sexual arousal or gratification with a prostitute.
- (2) Enters or remains in a place of prostitution with intent to engage in vaginal intercourse, any sexual act as defined in G.S. 14-27.20, or any sexual contact as defined in G.S. 14-27.20, for the purpose of sexual arousal or gratification.

(b) Except as provided in subsections (c) and (d) of this section, a first violation of this section is a Class A1 misdemeanor. Unless a higher penalty applies, a second or subsequent violation of this section is a Class G felony.

(c) A violation of this section is a Class F felony if the defendant is 18 years of age or older and the prostitute is a minor.

(d) A violation of this section is a Class D felony if the prostitute ~~is a severely or profoundly mentally disabled person~~ has a severe or profound mental disability."

SECTION 4.(g) G.S. 14-205.3 reads as rewritten:

"§ 14-205.3. Promoting prostitution.

...

(b) Any person who willfully performs any of the following acts commits the offense of promoting prostitution of a minor or ~~mentally disabled person~~ person who has a mental disability:

- (1) Advances prostitution as defined in G.S. 14-203, where a minor or ~~severely or profoundly mentally disabled person~~ person who has a severe or profound

mental disability engaged in prostitution, or any person engaged in prostitution in the place of prostitution is a minor or ~~is severely or profoundly mentally disabled~~ has a severe or profound mental disability at the time of the offense.

- (2) Profits from prostitution by any means where the prostitute is a minor or ~~is severely or profoundly mentally disabled~~ has a severe or profound mental disability at the time of the offense.
- (3) Confines a minor or a ~~severely or profoundly mentally disabled person~~ person who has a severe or profound mental disability against the person's will by the infliction or threat of imminent infliction of great bodily harm, permanent disability, or disfigurement or by administering to the minor or ~~severely or profoundly mentally disabled person~~ person who has a severe or profound mental disability, without the person's consent or by threat or deception and for other than medical purposes, any alcoholic intoxicant or a drug as defined in Article 5 of Chapter 90 of the General Statutes (North Carolina Controlled Substances Act) and does any of the following:
 - a. Compels the minor or ~~severely or profoundly mentally disabled person~~ person who has a severe or profound mental disability to engage in prostitution.
 - b. Arranges a situation in which the minor or ~~severely or profoundly mentally disabled person~~ person who has a severe or profound mental disability may practice prostitution.
 - c. Profits from prostitution by the minor or ~~severely or profoundly mentally disabled person~~ person who has a severe or profound mental disability.

For purposes of this subsection, administering drugs or an alcoholic intoxicant to a minor or a ~~severely or profoundly mentally disabled person~~ person who has a severe or profound mental disability, as described in subdivision (3) of this subsection, shall be deemed to be without consent if the administering is done without the consent of the parents or legal guardian or if the administering is performed or permitted by the parents or legal guardian for other than medical purposes. Mistake of age is not a defense to a prosecution under this subsection.

...."

SECTION 4.(h) G.S. 14-208.6 reads as rewritten:

"§ 14-208.6. Definitions.

The following definitions apply in this Article:

- (1a) ~~"Aggravated offense" means any Aggravated offense.~~ – Any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of serious violence; or (ii) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old.
- (1b) ~~"County registry" means the County registry.~~ – The information compiled by the sheriff of a county in compliance with this Article.
- (1c) ~~"Department" means the Department.~~ – The Department of Public Safety.
- (1d) ~~"Electronic mail" means the Electronic mail.~~ – The transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.
- (1e) ~~"Employed" includes Employed.~~ – Includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially

compensated, volunteered, or for the purpose of government or educational benefit.

- (1f) ~~"Entity" means a Entity.~~ – A business or organization that provides Internet service, electronic communications service, remote computing service, online service, electronic mail service, or electronic instant message or chat services whether the business or organization is ~~within~~ inside or outside the State.
- (1g) ~~"Instant Message" means a Instant message.~~ – A form of real-time text communication between two or more people. The communication is conveyed via computers connected over a network such as the Internet.
- (1h) ~~"Institution of higher education" means any Institution of higher education.~~ – Any postsecondary public or private educational institution, including any trade or professional institution, college, or university.
- (1i) ~~"Internet" means the Internet.~~ – The global information system that is logically linked together by a globally unique address space based on the Internet Protocol or its subsequent extensions; that is able to support communications using the Transmission Control Protocol/Internet Protocol suite, its subsequent extensions, or other Internet Protocol compatible protocols; and that provides, uses, or makes accessible, either publicly or privately, high-level services layered on the communications and related infrastructure described in this subdivision.
- (1j) ~~"Mental abnormality" means a Mental abnormality.~~ – A congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of others.
- (1k) ~~"Nonresident student" means a Nonresident student.~~ – A person who is not a resident of North Carolina but who is enrolled in any type of school in the State on a part-time or full-time basis.
- (1l) ~~"Nonresident worker" means a Nonresident worker.~~ – A person who is not a resident of North Carolina but who has employment or carries on a vocation in the State, on a part-time or full-time basis, with or without compensation or government or educational benefit, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year.
- (1m) ~~"Offense against a minor" means any Offense against a minor.~~ – Any of the following offenses if the offense is committed against a minor, and the person committing the offense is not the minor's parent: G.S. 14-39 (kidnapping), G.S. 14-41 (abduction of children), and G.S. 14-43.3 (felonious restraint). The term also includes the following if the person convicted of the following is not the minor's parent: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.
- (1n) ~~"Online identifier" means electronic Online identifier.~~ – Electronic mail address, instant message screen name, user ID, chat or other Internet communication name, but it does not mean social security number, date of birth, or pin number.
- (2) ~~"Penal institution" means: Penal institution.~~ – Any of the following:
- a. A detention facility operated under the jurisdiction of the Section of Prisons of the Division of Adult Correction and Juvenile Justice of the Department of Public ~~Safety;~~ Safety.
 - b. A detention facility operated under the jurisdiction of another state or the federal ~~government;~~ or government.

- c. A detention facility operated by a local government in this State or another state.
- (2a) ~~"Personality disorder" means an~~ Personality disorder. – An enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment.
- (2b) ~~"Recidivist" means a~~ Recidivist. – A person who has a prior conviction for an offense that is described in G.S. 14-208.6(4).
- (3) ~~"Release" means discharged~~ Release. – Discharged or paroled.
- (4) ~~"Reportable conviction" means:~~ Reportable conviction. – Any of the following:
- a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses unless the conviction is for aiding and abetting. A final conviction for aiding and abetting is a reportable conviction only if the court sentencing the individual finds that the registration of that individual under this Article furthers the purposes of this Article as stated in G.S. 14-208.5.
 - b. A final conviction in another state of an offense, which if committed in this State, is substantially similar to an offense against a minor or a sexually violent offense as defined by this section, or a final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state.
 - c. A final conviction in a federal jurisdiction (including a court martial) of an offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.
 - d. A final conviction for a violation of G.S. 14-202(d), (e), (f), (g), or (h), or a second or subsequent conviction for a violation of G.S. 14-202(a), (a1), or (c), only if the court sentencing the individual issues an order pursuant to G.S. 14-202(l) requiring the individual to register.
 - e. A final conviction for a violation of G.S. 14-43.14, only if the court sentencing the individual issues an order pursuant to G.S. 14-43.14(e) requiring the individual to register.
- (5) ~~"Sexually violent offense" means a~~ Sexually violent offense. – A violation of former G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.21 (first-degree forcible rape), G.S. 14-27.22 (second-degree forcible rape), G.S. 14-27.23 (statutory rape of a child by an adult), G.S. 14-27.24 (first-degree statutory rape), G.S. 14-27.25(a) (statutory rape of a person who is 15 years of age or younger and where the defendant is at least six years older), G.S. 14-27.26 (first-degree forcible sexual offense), G.S. 14-27.27 (second-degree forcible sexual offense), G.S. 14-27.28 (statutory sexual offense with a child by an adult), G.S. 14-27.29 (first-degree statutory sexual offense), G.S. 14-27.30(a) (statutory sexual offense with a person who is 15 years of age or younger and where the defendant is at least six years older), G.S. 14-27.31 (sexual activity by a substitute parent or custodian), G.S. 14-27.32 (sexual activity with a student), G.S. 14-27.33 (sexual battery), G.S. 14-43.11 (human trafficking) if (i) the offense is committed against a minor who is less than 18 years of age or (ii) the offense is committed against any person with the intent that they be held in sexual servitude, G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to

assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-205.2(c) or (d) (patronizing a prostitute who is a minor or ~~a mentally disabled person~~), has a mental disability), G.S. 14-205.3(b) (promoting prostitution of a minor or a ~~mentally disabled person~~), person who has a mental disability), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

- (6) ~~"Sexually violent predator" means a Sexually violent predator.~~ – A person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at strangers or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.
- (7) ~~"Sheriff" means the Sheriff.~~ – The sheriff of a county in this State.
- (8) ~~"Statewide registry" means the Statewide registry.~~ – The central registry compiled by the Department in accordance with G.S. 14-208.14.
- (9) ~~"Student" means a Student.~~ – A person who is enrolled on a full-time or part-time basis, in any postsecondary public or private educational institution, including any trade or professional institution, or other institution of higher education."

SECTION 4.(i) G.S. 15-144.1 reads as rewritten:

"§ 15-144.1. Essentials of bill for rape.

(a) In indictments for rape it is not necessary to allege every matter required to be proved on the trial; but in the body of the indictment, after naming the person accused, the date of the offense, the county in which the offense of rape was allegedly committed, and the averment "with force and arms," ~~as is now usual~~, it is sufficient in describing rape to allege that the accused person unlawfully, willfully, and feloniously did ravish and carnally know the victim, naming her, by force and against her will and concluding as ~~is now~~ required by law. Any bill of indictment containing the averments and allegations ~~herein named shall be in this section~~ is good and sufficient in law as an indictment for rape in the first degree and will support a verdict of guilty of rape in the first degree, rape in the second degree, attempted rape-rape, or assault on a female.

(b) If the victim is a female child under the age of 13 ~~years~~ years, it is sufficient to allege that the accused unlawfully, willfully, and feloniously did carnally know and abuse a child under 13, naming her, and concluding as ~~aforsaid~~ required by law. Any bill of indictment containing the averments and allegations ~~herein named shall be in this section~~ is good and sufficient in law as an indictment for the rape of a female child under the age of 13 years and all lesser included offenses.

(c) If the victim is a person who ~~is mentally disabled, mentally incapacitated, has a mental disability or who is mentally incapacitated~~ or physically helpless-helpless, it is sufficient to allege that the defendant unlawfully, willfully, and feloniously did carnally know and abuse a person who ~~was mentally disabled, had a mental disability or who was mentally incapacitated or physically helpless~~, naming ~~such the~~ the victim, and concluding as ~~aforsaid~~ required by law. Any bill of indictment containing the averments and allegations ~~herein named shall be in this section~~ is good and sufficient in law as an indictment for the rape of a person who is mentally disabled, mentally incapacitated, or physically helpless.

is good and sufficient in law for the rape of a ~~mentally disabled, mentally incapacitated or physically helpless person~~ person who has a mental disability or who is mentally incapacitated or physically helpless and all lesser included offenses."

SECTION 4.(j) G.S. 15-144.2 reads as rewritten:

"§ 15-144.2. Essentials of bill for sex offense.

(a) In indictments for sex offense it is not necessary to allege every matter required to be proved on the trial; but in the body of the indictment, after naming the person accused, the date of the offense, the county in which the sex offense was allegedly committed, and the averment "with force and arms," ~~as is now usual,~~ it is sufficient in describing a sex offense to allege that the accused person unlawfully, willfully, and feloniously did engage in a sex offense with the victim, naming the victim, by force and against the will of ~~such the~~ the victim and concluding as is ~~now~~ required by law. Any bill of indictment containing the averments and allegations ~~herein~~ named ~~shall be in this section~~ is good and sufficient in law as an indictment for a first degree sex offense and will support a verdict of guilty of a sex offense in the first degree, a sex offense in the second degree, an attempt to commit a sex offense-offense, or an assault.

(b) If the victim is a person under the age of 13 years, it is sufficient to allege that the defendant unlawfully, willfully, and feloniously did engage in a sex offense with a child under the age of 13 years, naming the child, and concluding as ~~aforsaid.~~ required by law. Any bill of indictment containing the averments and allegations ~~herein~~ named ~~shall be in this section~~ is good and sufficient in law as an indictment for a sex offense against a child under the age of 13 years and all lesser included offenses.

(c) If the victim is a person who ~~is mentally disabled, mentally incapacitated, has a mental disability or who is mentally incapacitated~~ or physically ~~helpless~~ helpless, it is sufficient to allege that the defendant unlawfully, willfully, and feloniously did engage in a sex offense with a person who ~~was mentally disabled, had a mental disability or who was mentally incapacitated or physically helpless,~~ naming ~~such the~~ the victim, and concluding as ~~aforsaid.~~ required by law. Any bill of indictment containing the averments and allegations ~~herein~~ named ~~shall be in this section~~ is good and sufficient in law for a sex offense against a ~~mentally disabled, mentally incapacitated or physically helpless person~~ person who has a mental disability or who is mentally incapacitated or physically helpless and all lesser included offenses."

SECTION 4.(k) G.S. 15A-290 reads as rewritten:

"§ 15A-290. Offenses for which orders for electronic surveillance may be granted.

(a) Orders authorizing or approving the interception of wire, oral, or electronic communications may be granted, subject to the provisions of this Article and Chapter 119 of Title 18 of the United States Code, when the ~~interception;~~ interception does any of the following:

- (1) May provide or has provided evidence of the commission of, or any conspiracy to ~~commit;~~ commit, any of the following:
 - a. Any of the drug-trafficking violations listed in ~~G.S. 90-95(h);~~ G.S. 90-95(h).
 - b. A continuing criminal enterprise in violation of G.S. 90-95.1.
- (2) May expedite the apprehension of persons indicted for the commission of, or any conspiracy to commit, an offense listed in subdivision (1) of this subsection.

(b) Orders authorizing or approving the interception of wire, oral, or electronic communications may be granted, subject to the provisions of this Article and Chapter 119 of Title 18 of the United States Code, when the interception may provide, or has provided, evidence of any offense that involves the commission of, or any conspiracy to commit, murder, kidnapping, hostage taking, robbery, extortion, bribery, rape, or any sexual offense, or when the interception may expedite the apprehension of persons indicted for the commission of these offenses.

(c) Orders authorizing or approving the interception of wire, oral, or electronic communications may be granted, subject to the provisions of this Article and Chapter 119 of Title 18 of the United States Code, when the interception may provide, or has provided, evidence of any of the following offenses, or any conspiracy to commit these offenses, or when the interception may expedite the apprehension of persons indicted for the commission of these offenses:

- (1) Any felony offense against a minor, including any violation of G.S. 14-27.31 (Sexual activity by a substitute parent or custodian), G.S. 14-27.32 (Sexual activity with a student), G.S. 14-41 (Abduction of children), G.S. 14-43.11 (Human trafficking), G.S. 14-43.12 (Involuntary servitude), G.S. 14-43.13 (Sexual servitude), G.S. 14-190.16 (First degree sexual exploitation of a minor), G.S. 14-190.17 (Second degree sexual exploitation of a minor), G.S. 14-202.1 (Taking indecent liberties with children), G.S. 14-205.2(c) or (d)(~~Patronizing a prostitute who is a minor or a mentally disabled person~~), has a mental disability), or G.S. 14-205.3(b) (~~Promoting prostitution of a minor or a mentally disabled person~~), person who has a mental disability).

...

(d) When an investigative or law enforcement officer, while engaged in intercepting wire, oral, or electronic communications in the manner authorized, intercepts wire, electronic, or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents ~~thereof, and evidence derived therefrom~~, of the communications and evidence derived from the communications may be disclosed or used as provided in G.S. 15A-294(a) and (b). ~~Such~~ The contents of the communications and any evidence derived ~~therefrom~~ from the communications may be used in accordance with G.S. 15A-294(c) when authorized or approved by a judicial review panel where the panel finds, on subsequent application made as soon as practicable, that the contents were otherwise intercepted in accordance with this Article or Chapter 119 of Title 18 of the United States Code.

(e) No otherwise privileged wire, oral, or electronic communication intercepted in accordance with, or in violation of, the provisions of this Article or Chapter 119 of Title 18 of the United States Code, shall lose its privileged character."

SECTION 4.(I) G.S. 115C-270.35 reads as rewritten:

"§ 115C-270.35. License suspension and revocation.

(a) Rules. – The State Board shall adopt rules to establish the reasons and procedures for the suspension and revocation of licenses, subject to the requirements of this section.

(b) Automatic Revocation With No Hearing. – The State Board shall automatically revoke the license of a professional educator without the right to a hearing upon receiving verification of the identity of the professional educator together with a certified copy of a criminal record showing that the professional educator has entered a plea of guilty or nolo contendere to or has been finally convicted of any of the following crimes:

...

- (21) Patronizing a prostitute who is a minor or ~~a mentally disabled person~~, has a mental disability, G.S. 14-205.2(c) or (d).
- (22) Promoting prostitution of a minor or ~~a mentally disabled person~~, person who has a mental disability, G.S. 14-205.3(b).
- (23) Child abuse under G.S. 14-318.4.

The State Board shall mail notice of its intent to act pursuant to this subsection by certified mail, return receipt requested, directed to the professional educator's last known address. The notice shall inform the professional educator that it will revoke the person's license unless the professional educator notifies the State Board in writing within 10 days after receipt of the notice that the defendant identified in the criminal record is not the same person as the professional educator. If the professional educator provides this written notice to the State Board, the State

Board shall not revoke the license unless it can establish as a fact that the defendant and the professional educator are the same person.

...
(e) Subpoena Power. – The State Board may issue subpoenas for the purpose of obtaining documents or the testimony of witnesses in connection with proceedings to suspend or revoke licenses. In addition, the Board ~~shall have the authority to~~ may contract with individuals who are qualified to conduct investigations in order to obtain all information needed to assist the Board in the proper disposition of allegations of misconduct by licensed persons."

SECTION 4.(m) G.S. 14-32.1 reads as rewritten:

"§ 14-32.1. Assaults on ~~handicapped persons;~~ individuals with a disability; punishments.

(a) For purposes of this section, a ~~"handicapped person" is a person-an~~ "individual with a disability" is an individual who has ~~has~~ one or more of the following that would substantially impair the ability to defend oneself:

(1) A physical or mental disability, such as a decreased use of arms or legs, blindness, deafness, ~~mental retardation~~ intellectual disability, or mental ~~illness; or~~ illness.

(2) ~~Infirmity~~ An infirmity.

~~which would substantially impair that person's ability to defend himself.~~

(b) through (d) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 31, effective October 1, 1994.

(e) Unless ~~his~~ the conduct is covered under some other provision of law providing greater punishment, any person who commits any aggravated assault or assault and battery on a ~~handicapped person-an~~ individual with a disability is guilty of a Class F felony. A person commits an aggravated assault or assault and battery upon a ~~handicapped person-an~~ individual with a disability if, in the course of the assault or assault and battery, that ~~person;~~ person does any of the following:

(1) Uses a deadly weapon or other means of force likely to inflict serious injury or serious damage to a ~~handicapped person; or~~ an individual with a disability.

(2) Inflicts serious injury or serious damage to a ~~handicapped person; or~~ an individual with a disability.

(3) Intends to kill a ~~handicapped person-an~~ individual with a disability.

(f) Any person who commits a simple assault or battery upon a ~~handicapped person-an~~ individual with a disability is guilty of a Class A1 misdemeanor."

SECTION 4.(n) G.S. 15A-266.3A reads as rewritten:

"§ 15A-266.3A. DNA sample required for DNA analysis upon arrest for certain offenses.

(a) Unless a DNA sample has previously been obtained by lawful process and the DNA record stored in the State DNA Database, and that record and sample has not been expunged pursuant to any provision of law, a DNA sample for DNA analysis and testing shall be obtained from any person who is arrested for committing an offense described in subsection (f) or (g) of this section.

...
(f) This section ~~shall apply~~ applies to a person arrested for violating any one of the following offenses in Chapter 14 of the General Statutes:

...
(4) G.S. 14-28, Malicious castration; G.S. 14-29, Castration or other maiming without malice aforethought; G.S. 14-30, Malicious maiming; G.S. 14-30.1, Malicious throwing of corrosive acid or alkali; G.S. 14-31, Maliciously assaulting in a secret manner; G.S. 14-32, Felonious assault with deadly weapon with intent to kill or inflicting serious injury; G.S. 14-32.1(e), Aggravated assault or assault and battery on ~~handicapped person;~~ an individual with a disability; G.S. 14-32.2(a) when punishable pursuant to

G.S. 14-32.2(b)(1), Patient abuse and neglect, intentional conduct proximately causes death; G.S. 14-32.3(a), Domestic abuse of disabled or elder adults resulting in injury; G.S. 14-32.4, Assault inflicting serious bodily injury or injury by strangulation; G.S. 14-33.2, Habitual misdemeanor assault; G.S. 14-34.1, Discharging certain barreled weapons or a firearm into occupied property; G.S. 14-34.2, Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers; G.S. 14-34.4, Adulterated or misbranded food, drugs, etc.; intent to cause serious injury or death; intent to extort; G.S. 14-34.5, Assault with a firearm on a law enforcement, probation, or parole officer or on a person employed at a State or local detention facility; G.S. 14-34.6, Assault or affray on a firefighter, an emergency medical technician, medical responder, emergency department nurse, or emergency department physician; G.S. 14-34.7, Assault inflicting serious injury on a law enforcement, probation, or parole officer or on a person employed at a State or local detention facility; G.S. 14-34.9, Discharging a firearm from within an enclosure; and G.S. 14-34.10, Discharge firearm within enclosure to incite fear.

...

(g) This section ~~shall also apply~~ also applies to a person arrested for attempting, solicitation of another to commit, conspiracy to commit, or aiding and abetting another to commit, any of the violations included in subsection (f) of this section.

...

(j) Prior to June 1, 2012, within 30 days of the receipt of the form required by subsection (i) of this section or the occurrence of one of the events in sub-subdivision a., b., or c. of subdivision (1) of subsection (h) of this section; and on or after June 1, 2012, within 30 days of the occurrence of one of the events in subdivision (1) of subsection (h) of this section, the prosecuting district attorney shall determine if a DNA sample was taken pursuant to this section, and if so, ~~shall~~ shall do all of the following:

- (1) Verify and indicate the facts of the qualifying event on a verification form promulgated by the Administrative Office of the Courts.
- (2) Include the last known address of the defendant, as reflected in the court files, on the verification form.
- (3) Sign the verification form or, if the defendant was acquitted or the charges were dismissed by the court, obtain the signature of a judge.
- (4) Transmit the verification form to the Crime Laboratory.

(k) Within 90 days of receipt of the verification form, the Crime Laboratory ~~shall~~ shall do all of the following:

- (1) Determine whether the requirement of subdivision (2) of subsection (h) of this section has been met.
- (2) If the requirement has been met, remove the defendant's DNA record and samples as required by subsection (h) of this section.
- (3) Mail to the defendant, at the address specified in the verification form, a notice doing either of the following:
 - a. Documenting expunction of the DNA record and destruction of the DNA sample.
 - b. Notifying the defendant that the DNA record and sample do not qualify for expunction pursuant to subsection (h) of this section.

...."

SECTION 4.(o) G.S. 15A-266.4 reads as rewritten:

"§ 15A-266.4. DNA sample required for DNA analysis upon conviction or finding of not guilty by reason of insanity.

...

- (b) Crimes covered by this Article include all of the following:
- (1) All felonies.
 - (2) G.S. 14-32.1 – Assaults on ~~handicapped persons~~ individuals with a disability.
 - (3) Former G.S. 14-277.3 – Stalking.
 - (4) Repealed by Session Laws 2010-94, s. 5, effective February 1, 2011.
 - (5) All offenses described in G.S. 15A-266.3A."

SECTION 5. G.S. 15A-2000 reads as rewritten:

"§ 15A-2000. Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.

- (a) Separate Proceedings on Issue of Penalty. –
- (1) Except as provided in G.S. 15A-2004, upon conviction or adjudication of guilt of a defendant of a capital felony in which the State has given notice of its intent to seek the death penalty, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. A capital felony is one which may be punishable by death.
 - (2) The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. If prior to the time that the trial jury begins its deliberations on the issue of penalty, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which ~~he~~ the alternate juror was selected. If the trial jury is unable to reconvene for a hearing on the issue of penalty after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue of the punishment. If the defendant pleads guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose. A jury selected for the purpose of determining punishment in a capital case shall be selected in the same manner as juries are selected for the trial of capital cases.

...

(b) Sentence Recommendation by the Jury. – Instructions determined by the trial judge to be warranted by the evidence shall be given by the court in its charge to the jury prior to its deliberation in determining sentence. The court shall give appropriate instructions in those cases in which evidence of the defendant's ~~mental retardation~~ intellectual disability requires the consideration by the jury of the provisions of G.S. 15A-2005. In all cases in which the death penalty may be authorized, the judge shall include in ~~his~~ the judge's instructions to the jury that it must consider any aggravating circumstance or circumstances or mitigating circumstance or circumstances from the lists provided in subsections (e) and (f) of this section which may be supported by the evidence, and shall furnish to the jury a written list of issues relating to such aggravating or mitigating circumstance or circumstances.

After hearing the evidence, argument of counsel, and instructions of the court, the jury shall deliberate and render a sentence recommendation to the court, based upon all of the following matters:

- (1) Whether any sufficient aggravating circumstance or circumstances as enumerated in subsection (e) ~~exist~~; of this section exist.

- (2) Whether any sufficient mitigating circumstance or circumstances as enumerated in subsection ~~(f)~~, (f) of this section, which outweigh the aggravating circumstance or circumstances found, ~~exist, and exist.~~
- (3) Based on these considerations, whether the defendant should be sentenced to death or to imprisonment in the State's prison for life.

The sentence recommendation must be agreed upon by a unanimous vote of the 12 jurors. Upon delivery of the sentence recommendation by the foreman of the jury, the jury shall be individually polled to establish whether each juror concurs and agrees to the sentence recommendation returned.

If the jury cannot, within a reasonable time, unanimously agree to its sentence recommendation, the judge shall impose a sentence of life imprisonment; ~~provided, however, that the imprisonment.~~ The judge shall in no instance impose the death penalty when the jury cannot agree unanimously to its sentence recommendation.

(c) Findings in Support of Sentence of Death. – When the jury recommends a sentence of death, the foreman of the jury shall sign a writing on behalf of the jury ~~which writing shall show that shows all of the following:~~

- (1) The statutory aggravating circumstance or circumstances which the jury finds beyond a reasonable ~~doubt, and~~ doubt.
- (2) That the statutory aggravating circumstance or circumstances found by the jury are sufficiently substantial to call for the imposition of the death ~~penalty; and, penalty.~~
- (3) That the mitigating circumstance or circumstances are insufficient to outweigh the aggravating circumstance or circumstances found.

(d) Review of Judgment and Sentence. –

- ...
- (2) The sentence of death shall be overturned and a sentence of life imprisonment imposed in lieu thereof by the Supreme Court upon a finding that the record does not support the jury's findings of any aggravating circumstance or circumstances upon which the sentencing court based its sentence of death, or upon a finding that the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor, or upon a finding that the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. The Supreme Court may suspend consideration of death penalty cases until such time as the court determines it is prepared to make the comparisons required under ~~the provisions of this section.~~
- ...

(e) Aggravating Circumstances. – Aggravating circumstances which may be considered ~~shall be~~ are limited to the following:

- ...
- (f) Mitigating Circumstances. – Mitigating circumstances which may be considered ~~shall~~ include, but ~~not be~~ are not limited to, the following:

- ...
- (4) The defendant was an accomplice in or accessory to the capital felony committed by another person and ~~his~~ the defendant's participation was relatively minor.
 - (5) The defendant acted under duress or under the domination of another person.
 - (6) The capacity of the defendant to appreciate the criminality of ~~his~~ the defendant's conduct or to conform ~~his~~ that conduct to the requirements of law was impaired.
 - (7) The age of the defendant at the time of the crime.

- (8) The defendant aided in the apprehension of another capital felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.
- (9) Any other circumstance arising from the evidence which the jury deems to have mitigating value."

SECTION 6.(a) G.S. 58-32-10 reads as rewritten:

"§ 58-32-10. Powers and duties of Commission.

The Commission may acquire from an insurance company or insurance companies a group plan of professional liability insurance covering the law-enforcement officers and/or public officers and employees of any political subdivision of the State. The Commission ~~shall have~~ has full authority to negotiate with insurance companies submitting bids or proposals and shall award its group plan master contract on the basis of the company or companies found by it to offer maximum coverage at the most reasonable premium. The Commission ~~is authorized to~~ may enter into a master policy contract of ~~such any term as that it finds to be in the best interests of the law-enforcement officers and/or public officers and employees of the political subdivisions of the State, not to exceed five years. The Commission, in negotiating for such the contract, is not authorized to pledge or offer the credit of the State of North Carolina. The insurance premiums shall be paid by the political subdivisions whose employees are covered by the professional liability insurance. Any political subdivision may elect coverage for any or all of its employees on a departmental basis; provided all basis. All employees in a department must be covered if coverage is elected for that department. Nothing contained herein shall be construed to require in this section requires~~ any political subdivision to participate in any group plan of professional liability insurance.

The Commission may, in its discretion, employ professional and clerical staff whose salaries shall be as established by the State Human Resources Commission.

~~Should~~ If the Commission ~~determine~~ determines that reasonable coverage is not available at a reasonable cost, the Commission may undertake ~~such any~~ studies and inquiries into the situation and alternatives, including ~~self insurance self-insurance and State administered State-administered funds, as that~~ the Commission deems appropriate. The Commission shall then bring before the General Assembly ~~such any~~ recommendations ~~as that~~ it deems appropriate.

The Commission may acquire information regarding loss ratios, loss factors, loss ~~experience~~ experience, and other such facts and figures from any agency or company issuing professional liability insurance covering public officers, ~~employees employees,~~ or law-enforcement officers ~~in the State of North Carolina. Such this State. This information shall not be deemed is not~~ a public record within the meaning of Chapter 132 of the General Statutes where it names the company divulging ~~such the~~ information, but the Commission may make public ~~such the~~ information to show aggregate statistics in respect to the experience of the State as a whole. The information shall be provided to the Commission upon its written demand and shall be submitted to the Commission by ~~such the~~ company or companies upon sworn affidavit. If any agency or company ~~shall fail fails~~ or ~~refuse refuses~~ to supply ~~such the~~ information to the Commission within a reasonable time following receipt of the demand, the Commission may apply to the Superior Court sitting in Wake County for appropriate orders to enforce the demand.

For purposes of this section, the term "political subdivision" includes any county, city, town, incorporated village, sanitary district, metropolitan water district, county water and sewer district, water and sewer authority, hospital authority, parking authority, local ABC ~~boards, board,~~ special airport district, airport authority, soil and water conservation district created pursuant to G.S. 139-5, fire district, volunteer or paid fire department, rescue ~~squads, squad,~~ city or county parks and recreation ~~commissions, commission,~~ area mental health ~~boards, board,~~ area mental health, ~~mental retardation developmental disabilities,~~ and substance abuse authority as described in G.S. 122C-117, domiciliary home community advisory ~~committees, committee,~~ county ~~and or~~ district ~~boards board~~ of health, nursing home advisory ~~committees, committee,~~ county ~~boards board~~ of social services, local school administrative ~~units, unit,~~ local ~~boards board~~ of education,

community colleges, college, and all other persons, bodies, or agencies authorized or regulated by Chapters 108A, 115C, 115D, 118, 122C, 130A, 131A, 131D, 131E, 153A, 160A, and 160B of the General Statutes."

SECTION 6.(b) G.S. 62-289.3 reads as rewritten:

"§ 62-289.3. Definitions.

~~As used in this Article:~~ The following definitions apply in this Article:

- (1) ~~"Human service agency" means any Human service agency.~~ – Any charitable or governmental agency including, but not limited to: county departments of social services, area mental health, ~~mental retardation or developmental disabilities,~~ and substance abuse authorities, local health departments, councils on aging, community action agencies, sheltered workshops, group ~~homes~~ homes, and State residential institutions.
- (2) ~~"Human service transportation" means motor Human service transportation.~~ – Motor vehicle transportation provided on a nonprofit basis by a human service agency for the purpose of transporting clients or recipients in connection with programs sponsored by the agency. "Human service transportation" ~~shall also mean~~ also means motor vehicle transportation provided by for-profit persons under exclusive contract with a human service agency for the transportation of clients or recipients, and such provider shall also qualify as a human service agency for the purpose of motor vehicle registration during the term of the contract. The motor vehicle may be owned, leased, borrowed, or contracted for use by or from the human service agency.
- (3) ~~"Nonprofit" as Nonprofit.~~ – As applied to human service transportation, means motor vehicle transportation provided at cost.
- (4) ~~"Person" means an Person.~~ – An individual, corporation, company, association, ~~partnership~~ partnership, or other legal entity.
- (5) ~~"Volunteer transportation" means motor Volunteer transportation.~~ – Motor vehicle transportation provided by any person under the direction, sponsorship, or supervision of a human service agency. The person may receive an allowance to defray the actual cost of operating the vehicle but shall not receive any other compensation."

SECTION 6.(c) G.S. 143B-152.14 reads as rewritten:

"§ 143B-152.14. Cooperation of State and local agencies.

All agencies of the State and local government, including the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, departments of social services, health departments, local mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Health and Human Services, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Health and Human Services, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program."

SECTION 6.(d) G.S. 153A-247 reads as rewritten:

"§ 153A-247. Provision for public health and mental health.

A county may provide for and regulate the public health pursuant to Chapter 130A of the General Statutes and any other law authorizing local public health activities and may provide ~~mental health[,] mental retardation,~~ mental health, developmental disabilities, and substance abuse programs pursuant to Chapter 122C of the General Statutes."

SECTION 7.(a) G.S. 58-51-25 reads as rewritten:

"§ 58-51-25. Policy coverage to continue as to ~~mentally retarded or physically handicapped children; children with an intellectual or physical disability; coverage of or dependent students on medically necessary leave of absence.~~

(a) An individual or group accident and health insurance policy, hospital service plan policy, or medical service plan policy that provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract, shall also provide in substance that attainment of ~~such the~~ limiting age shall not operate or terminate the coverage of ~~such the~~ child while the child is and continues to be (i) incapable of self-sustaining employment by reason of ~~mental retardation or physical handicap; an intellectual or physical disability;~~ and (ii) chiefly dependent upon the policyholder or subscriber for support and ~~maintenance. Provided, maintenance.~~ The proof of such incapacity and dependency ~~is shall~~ be furnished to the insurer, hospital service plan corporation, or medical service plan corporation by the policyholder or subscriber within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation, but not more frequently than annually after the child's attainment of the limiting age.

(b) All health benefit plans, as defined in G.S. 58-3-167, that provide that coverage of a dependent child shall terminate upon a change in enrollment of the child in a postsecondary educational institution shall provide for the continued eligibility of the dependent child during a medically necessary leave of absence from the postsecondary educational institution in accordance with all applicable requirements of Public Law 110-381, known as Michelle's Law."

SECTION 7.(b) G.S. 58-51-35 reads as rewritten:

"§ 58-51-35. Insurers and others to afford coverage to ~~mentally retarded and physically handicapped children; children with an intellectual or physical disability.~~

(a) No insurance company licensed in this State pursuant to the provisions of Articles 1 through 64 of this Chapter and no corporation governed by the provisions of Articles 65 and 66 of this Chapter shall refuse to issue or deliver any individual or group accident and health insurance policy ~~of or~~ hospital or medical service plan policy in this State which it is currently issuing for delivery in this State and which affords benefits or coverage for minor children of the applicant, by reason of ~~the physical handicap or mental retardation; an intellectual or physical disability~~ of any minor children of the applicant; nor shall any such policy issued and delivered in this State carry a higher premium rate or charge or restrict or exclude coverage or benefits by reason of ~~said mental retardation or physical handicap. Provided, however, such policy the intellectual or physical disability.~~ The policy, however, may exclude benefits, otherwise payable for disability, hospitalization, or medical or other therapeutic expense directly and solely attributable to ~~such mental retardation or such physical handicap; the intellectual or physical disability.~~

...

(c) The provisions of this section shall apply to corporations governed by the provisions of Articles 65 and 66 of this Chapter."

SECTION 7.(c) G.S. 58-51-40 reads as rewritten:

"§ 58-51-40. Insurers and others to afford coverage for active medical treatment in tax-supported institutions.

(a) Whenever any policy of insurance governed by Articles 1 through 64 of this Chapter provides for benefits for charges of hospitals or physicians, the policy shall provide for payments of benefits for charges made for medical care rendered in or by duly licensed State tax-supported institutions, including charges for medical care of cerebral palsy, other orthopedic and crippling disabilities, mental and nervous diseases or disorders, ~~mental retardation; intellectual disability,~~ alcoholism and drug or chemical dependency, and respiratory illness, on a basis no less favorable than the basis which would apply had the medical care been rendered in or by any other public or private institution or provider. The term "State tax-supported institutions" ~~shall include~~

- G.S. 58-51-35. or physical disability or dependent students on medically necessary leave of absence.
 Insurers and others to afford coverage to ~~mentally retarded and physically handicapped children~~ children with an intellectual or physical disability.
- G.S. 58-51-45. Policies to be issued to any person possessing the sickle-cell trait or hemoglobin C trait."

SECTION 8. G.S. 110-20.1 reads as rewritten:

"§ 110-20.1. Exhibition of certain children prohibited.

(a) Except to the extent otherwise provided in subsection (d) of this section, it is unlawful to exhibit publicly for any purpose, or to exhibit privately for the purpose of entertainment, or solely or primarily for the satisfaction of the curiosity of any observer, any child under the age of 18 years who is ~~mentally ill or mentally retarded~~ has a mental illness or intellectual disability or who presents the appearance of having any deformity or unnatural physical formation or development, whether or not the exhibiting of the child is in return for a monetary or other consideration.

(b) It is unlawful to employ, use, have custody of, or in any way be associated with any child described in subsection (a) of this section for the purpose of an exhibition ~~forbidden therein, prohibited by subsection (a) of this section,~~ or for one who has the care, ~~custody~~ custody, or control of the child as a parent, relative, guardian, ~~employer~~ employer, or otherwise, to neglect or refuse to restrain the child from participating in the exhibition.

(c) It is unlawful to procure or arrange for, or participate in procuring or arranging for, anything made unlawful by subsections (a) and ~~(b)~~ (b) of this section.

(d) This section does not apply to the transmission of an image by television by a duly licensed television station, or to any exhibition by a federal, State, ~~county~~ county, or municipal government, or political subdivision or agency thereof, or to any exhibition by any corporation, unincorporated association, or other organization organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(e) Any violation of this Article ~~shall be~~ is a Class 3 misdemeanor. Each day during which any violation of this Article continues after notice to the violator, from any county social services director, to cease and desist from any violation of this section ~~shall constitute~~ is a separate and distinct offense. Any act or omission ~~forbidden~~ prohibited by this Article ~~shall,~~ Article is, with respect to each ~~child described therein~~ child, a separate and distinct offense."

SECTION 9. G.S. 115C-106.3 reads as rewritten:

"§ 115C-106.3. Definitions.

The following definitions apply in this Article:

- (1) ~~"Child with a disability" means a~~ Child with a disability. – A child with at least one disability who because of that disability requires special education and related services.
- (2) ~~"Disability" includes mental retardation;~~ Disability. – Includes intellectual disability; hearing impairment, including deafness; speech or language impairment; visual impairment, including blindness; serious emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairments, specific learning disability, or other disability as may be required to be included under IDEA. For a child ages three through seven, this term also includes developmental delay.
- (3) ~~"Dispute" means a~~ Dispute. – A disagreement between the parties.
- (3a) ~~"Educational services" means all~~ Educational services. – All of the following:
 - a. The necessary instructional hours per week in the form and format as determined by the child's IEP team and consistent with federal and

State law. The instruction shall be delivered by an appropriately qualified teacher to the extent required by federal and State law, which requires a free appropriate public education and the opportunity for a sound basic education.

- b. Related services included in the child's IEP.
 - c. Behavior intervention services to the extent required by federal law.
- (4) ~~"Free appropriate public education" means special~~ Free appropriate public education. – Special education and related services that satisfy all of the following:
- a. Are provided at public expense, under public supervision and direction, and without ~~charge;~~charge.
 - b. Meet the standards of the State ~~Board;~~Board.
 - c. Include an appropriate preschool, elementary school, or secondary school education in the ~~State;~~ and State.
 - d. Are provided in conformity with an individualized education program.
- (5) ~~"Hearing officers" include~~ Hearing officers. – Include administrative law judges as defined in G.S. 150B-2(1) and hearing review officers.
- (5a) ~~"Homebound instruction" means educational~~ Homebound instruction. – Educational services provided to a student outside the school setting.
- (6) ~~"IDEA" means~~ IDEA. – The Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, et seq., (2004), as amended, and federal regulations adopted under this act.
- (7) ~~"IEP Team" is as~~ IEP Team. – As defined in IDEA.
- (8) ~~"Individualized education program" or "IEP" means a~~ Individualized education program (IEP). – A written statement for each child with a disability that is developed, reviewed, implemented, and revised consistent with IDEA and State law.
- (9) ~~"Infant or toddler with a disability" is as~~ Infant or toddler with a disability. – As defined in IDEA.
- (10) ~~"Least restrictive environment" means to~~ Least restrictive environment. – To the maximum extent appropriate, children with disabilities are educated with children who ~~are not disabled,~~ do not have disabilities, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- (11) ~~"Local educational agency" includes~~ Local educational agency. – Includes any of the following that provides special education and related services to children with disabilities:
- a. A local school administrative unit.
 - b. A charter school.
 - c. The Department of Health and Human Services.
 - d. The Division of Adult Correction and Juvenile Justice of the Department of Public Safety.
 - e. Repealed by Session Laws 2017-186, s. 2(yyyy), effective December 1, 2017.
 - f. Any other State agency or unit of local government.
- (12) ~~"Mediation" means an~~ Mediation. – An informal process conducted by a mediator with the objective of helping parties voluntarily settle their dispute.
- (13) ~~"Mediator" means a~~ Mediator. – A neutral person who acts to encourage and facilitate a resolution of a dispute.

- (14) ~~"Parent" means:~~Parent. – Any of the following:
- a. A natural, adoptive, or foster ~~parent;~~parent.
 - b. A guardian, but not the State if the child is a ward of the ~~State;~~State.
 - c. An individual acting in the place of a natural or adoptive parent, including a grandparent, stepparent, or other relative, and with whom the child ~~lives;~~lives.
 - d. An individual who is legally responsible for the child's ~~welfare;~~orwelfare.
 - e. A surrogate if one is appointed under G.S. 115C-109.2.
- (15) ~~"Party" or "Parties" means the~~Party or parties. – The local educational agency or the parents, or both.
- (16) ~~"Petition" means a~~Petition. – A request for a due process hearing as provided for under IDEA.
- (17) ~~"Preschool child with a disability" means a~~Preschool child with a disability. – A child with one or more disabilities who meets all of the following criteria:
- a. Has reached his or her third birthday and whose parents have requested services from the public schools.
 - b. Is not eligible to enroll in public kindergarten.
 - c. Because of the disability, needs special education and related services in order to prepare the child to benefit from the educational programs provided by the public schools, beginning with kindergarten.
- (18) ~~"Related services" is as~~Related services. – As defined in IDEA.
- (18a) ~~"Residence" or "reside" means the~~Residence. – The place where a child with a disability is entitled to be enrolled in a North Carolina public school under G.S. 115C-366 except for the age requirements of that section. This definition shall does not apply to children with disabilities who were (i) enrolled in a particular local school administrative unit on the last day of school for the 2006-2007 school year, or (ii) enrolled in and attending a school in a particular local school administrative unit on August 1, 2007, for the 2007-2008 school year for as long as they live within and are continuously enrolled in that local school administrative unit. "Reside" means to have a residence as defined in this subdivision.
- (19) ~~"Rules" includes~~Rules. – Includes rules, policies, and procedures. Rules as defined in G.S. 150B-2(8a) shall be adopted in accordance with Article 2A of Chapter 150B of the General Statutes.
- (20) ~~"Special education" means specially~~Special education. – Specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. The term includes instruction in physical education and instruction conducted in a classroom, the home, a hospital or institution, and other settings."

SECTION 10.(a) G.S. 130A-399 reads as rewritten:

"§ 130A-399. Postmortem examination of inmates of certain public institutions.

Upon the death of any inmate of an institution maintained by the State, or a city, ~~county~~county, or other political subdivision of the State, for the care of ~~the sick, mentally ill or mentally retarded,~~individuals with a sickness, mental illness, or intellectual disability, the administrator of the institution in which the death occurs ~~is empowered to~~may authorize a postmortem examination of the deceased person. The examination shall be of a scope and nature necessary to promote knowledge of the human organism and its disorders."

SECTION 10.(b) G.S. 130A-415 reads as rewritten:

"§ 130A-415. Unclaimed bodies; bodies claimed by the Lifeguardianship Council of the ~~Association for Retarded Citizens of North Carolina; The Arc of North Carolina, Inc.~~; disposition.

(a) Any person, including officers, ~~employees-employees,~~ and agents of the State or of any unit of local government in the State, undertakers doing business within the State, hospitals, nursing ~~homes-homes,~~ or other institutions, having physical possession of a dead body shall make reasonable efforts to contact relatives of the deceased or other persons who may wish to claim the body for final disposition. If the body remains unclaimed for final disposition for 10 days, the person having possession shall notify the Commission of Anatomy. Upon request of the Commission of Anatomy, the person having possession shall deliver the dead body to the Commission of Anatomy at a time and place specified by the Commission of Anatomy or shall permit the Commission of Anatomy to take and remove the body.

(b) All dead bodies not claimed for final disposition within 10 days of the decedent's death may be received and delivered by the Commission of Anatomy pursuant to the authority contained in G.S. 130A-33.30 and this Part and in accordance with the rules of the Commission of Anatomy. Upon receipt of a body by the Commission of Anatomy all interests in and rights to the unclaimed dead body shall vest in the Commission of Anatomy. The recipient to which the Commission of Anatomy delivers the body shall pay all expenses for the embalming and delivery of the ~~body, and for body and~~ the reasonable expenses arising from efforts to notify relatives or others.

...

(e) Due caution shall be taken to shield the unclaimed body from public view.

(f) Notwithstanding ~~anything contained in~~ this section, an unclaimed body ~~shall does not~~ mean a dead body for which the deceased has made a gift pursuant to Part 3A of this Article.

(g) Nothing in this Part ~~shall require-requires~~ the officers, ~~employees-employees,~~ or agents of a county to notify the Commission of Anatomy regarding the bodies of minors who were in the custody of the county at the time of death and whose final disposition will be arranged by the county. In the absence of notification, the expenses of the final disposition shall be a charge upon the county having custody.

(h) ~~The provisions of this Part shall~~ This Part does not apply to bodies within the jurisdiction of the medical examiner under G.S. 130A-383 or G.S. 130A-384.

(i) In addition to the other duties of the Commission of Anatomy, when the Commission of Anatomy is notified by the Lifeguardianship Council of ~~the Association of Retarded Citizens of North Carolina, Inc., The Arc of North Carolina, Inc.,~~ that the Council intends to claim a body, the Commission shall release the body to the Council. The Lifeguardianship Council shall notify the Commission of Anatomy within 24 hours after death of its intent to claim a body for burial or other humane and caring disposition."

SECTION 11. G.S. 143-282 reads as rewritten:

"§ 143-282. Duties of Commission; recommendations.

This Commission shall study the problems relating to the care of the aged with ~~especial~~ special reference to those failing mentally and shall inquire into the methods of meeting and handling this problem in other states. It shall make a similar study of the problem of the care of ~~the feebleminded, individuals with an intellectual disability,~~ with ~~especial-special~~ attention to ~~the those requiring custodial care of intellectually handicapped persons not teachable or trainable.~~ care. It shall make a study of the problems relating to the care of ~~the physically handicapped~~ individuals with a physical disability with a special reference to those whose physical ~~handicap~~ disability renders them incapable of self-support and shall inquire into the methods of meeting and handling this problem in other states.

It shall make recommendations to the Governor offering plans for dealing with the problem of the care needed for this group, and means of clarification of the responsibility of the State and respective counties."

SECTION 12. G.S. 159-40 reads as rewritten:

"§ 159-40. Special regulations pertaining to nonprofit corporations receiving public funds.

(a) If a city or county grants or appropriates one thousand dollars (\$1,000) or more in any fiscal year to a nonprofit corporation or organization, the city or county may require that the nonprofit corporation or organization have an audit performed for the fiscal year in which the funds are received and may require that the nonprofit corporation or organization file a copy of the audit report with the city or county.

(b) Any nonprofit corporation or organization which receives one thousand dollars (\$1,000) or more in State funds shall, at the request of the State Auditor, submit to an audit by the office of the State Auditor for the fiscal year in which ~~such the~~ funds were received.

(c) Every nonprofit corporation or organization which has an audit performed pursuant to this section shall file a copy of the audit report with the office of the State Auditor.

(d) ~~The provisions of this section shall~~ This section does not apply to sheltered workshops or to Adult Development Activity Programs or to private residential facilities for the mentally retarded and developmentally disabled or to Developmental Day Care Centers or to any the following:

(1) Sheltered workshops.

(2) Adult development activity programs.

(3) Private residential facilities for individuals with an intellectual or developmental disability.

(4) Developmental day care centers.

(5) Any nonprofit corporation or organization whose sole use of public funds is to provide hospital services or operate as a volunteer fire department, rescue squad, or ambulance squad, or which operates as a junior college, college, college, or university duly accredited by the southern regional accrediting association.

(e) Repealed by Session Laws 1979, c. 905."

SECTION 13. G.S. 168-21 reads as rewritten:

"§ 168-21. Definitions.

~~As used in this Article:~~ The following definitions apply in this Article:

(1) ~~"Family care home" means a~~ Family care home. – A home with support and supervisory personnel that provides room and board, personal care, and habilitation services in a family environment for not more than six resident persons with disabilities.

(2) ~~"Person with disabilities" means a~~ Person with disabilities. – A person with a temporary or permanent physical, emotional, or mental disability including but not limited to mental retardation, an intellectual disability, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in G.S. 122C-3(11)b."

SECTION 14. G.S. 168A-3 reads as rewritten:

"§ 168A-3. Definitions.

~~As used in this Chapter, unless the context otherwise requires:~~ The following definitions apply in this Chapter:

(1) ~~"Covered governmental entity" means any~~ Covered governmental entity. – Any State department, institution, agency, or any political subdivision of the State or any person that contracts with a State department, institution, agency, or political subdivision of the State for the delivery of public services, including, but not limited to, education, health, social services, recreation, and rehabilitation.

- (1a) ~~"Disabling condition" means any~~ Disabling condition. – Any condition or characteristic that renders a person a person with a disability.
- (1b) ~~"Discriminatory practice" means any~~ Discriminatory practice. – Any practice prohibited by this Chapter.
- (2) ~~"Employer" means any~~ Employer. – Any person employing 15 or more full-time employees within the State, but excluding a person whose only employees are hired to work as domestic or farm workers at that person's home or farm.
- (3) ~~"Employment agency" means a~~ Employment agency. – A person regularly undertaking with or without compensation to procure for employees opportunities to work for an employer and includes an agent of such a person.
- (4) Recodified as G.S. 168A-3(7a).
- (4a) ~~"Information technology" has the same meaning as~~ Information technology. – As defined in G.S. 143B-1320. The term also specifically includes information transaction machines.
- (5) Recodified as G.S. 168A-3(1).
- (6) ~~"Labor organization" means an~~ Labor organization. – An organization of any kind, an agency or employee representation committee, a group association, or a plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.
- (7) ~~"Person" includes any~~ Person. – Any individual, partnership, association, corporation, labor organization, legal representative, trustee, receiver, and the State and its departments, agencies, and political subdivisions.
- (7a) ~~"Person with a disability" means any~~ Person with a disability. – Any person who (i) has a physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment. ~~As used in this subdivision, the term:~~ The following definitions apply in this subdivision:
- a. ~~"Physical or mental impairment" means (i) any~~ Physical or mental impairment. – Any of the following:
1. Any physiological disorder or abnormal condition, cosmetic disfigurement, or anatomical loss, caused by bodily injury, birth defect—defect, or illness, affecting a body system, including, but not limited to, neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental disorder, such as mental retardation, organic brain syndrome, mental illness, specific learning disabilities, and other developmental disabilities, but (iii) endocrine.
 2. Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.
- "Physical or mental impairment" excludes (A)-(i) sexual preferences; (B)-(ii) active alcoholism or drug addiction or abuse; and (C)-(iii) any disorder, condition—condition, or disfigurement which is temporary in nature, lasting six months or fewer, and leaving no residual impairment. A disorder, condition, or disfigurement that is episodic or

in remission is a physical or mental impairment if it would substantially limit a major life activity when active.

- b. ~~"Major life activities" means functions,~~ Major life activities. – Functions, including, but not limited to, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, eating, sleeping, lifting, bending, standing, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including, but not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- c. ~~"Has a record of such an impairment" means has~~ Has a record of such an impairment. – Has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits major life activities.
- d. ~~"Is regarded as having an impairment" means (i) has~~ Is regarded as having an impairment. – Any of the following:
 - 1. Has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a ~~limitation;~~ limitation.
 - 2. Has a physical or mental impairment that substantially limits major life activities because of the attitudes of ~~others;~~ or (iii) has others.
 - 3. Has none of the impairments defined in ~~paragraph~~ sub-subdivision a. of this subdivision but is treated as having such an impairment.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as (i) medication, medical supplies, equipment, or appliances, low-vision devices, which do not include ordinary eyeglasses or contact lenses, prosthetics, including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; (ii) use of assistive technology; (iii) reasonable accommodations or auxiliary aids or services; or (iv) learned behavioral or adaptive neurological modifications.

- (8) ~~"Place of public accommodations" includes,~~ Place of public accommodations. – Includes, but is not limited to, any place, facility, store, other establishment, hotel, or motel, which supplies goods or services on the premises to the public or which solicits or accepts the patronage or trade of any person.
- (9) ~~"Qualified person with a disability" means:~~ Qualified person with a disability. – All of the following:
 - a. With regard to employment, a person with a disability who can satisfactorily perform the duties of the job in question, with or without reasonable accommodation, (i) provided that the person with a disability shall not be held to standards of performance different from other employees similarly employed, and (ii) further provided that the disabling condition does not create an unreasonable risk to the safety or health of the person with a disability, other employees, the employer's customers, or the ~~public;~~ public.

- b. With regard to places of public accommodation a person with a disability who can benefit from the goods or services provided by the place of public ~~accommodation; and accommodation.~~
 - c. With regard to public services and public transportation a person with a disability who meets prerequisites for participation that are uniformly applied to all participants, such as income or residence, and that do not have the effect of discriminating against persons with a disability.
- (10) ~~"Reasonable accommodations"~~ means: Reasonable accommodations. – All of the following:
- a. With regard to employment, making reasonable physical changes in the workplace, including, but not limited to, making facilities accessible, modifying equipment and providing mechanical aids to assist in operating equipment, or making reasonable changes in the duties of the job in question that would accommodate the known disabling conditions of the person with a disability seeking the job in question by enabling him or her to satisfactorily perform the duties of that job; ~~provided that "reasonable job."~~ "Reasonable accommodation" does not require that an employer; employer do any of the following:
 1. Hire one or more employees, other than the person with a disability, for the purpose, in whole or in part, of enabling the person with a disability to be ~~employed; or employed.~~
 2. Reassign duties of the job in question to other employees without assigning to the employee with a disability duties that would compensate for those ~~reassigned; or reassigned.~~
 3. Reassign duties of the job in question to one or more other employees where ~~such the~~ reassignment would increase the skill, ~~effort effort,~~ or responsibility required of ~~such the~~ other employee or employees from that required prior to the change in ~~duties; or duties.~~
 4. Alter, modify, ~~change change,~~ or deviate from bona fide seniority policies or ~~practices; or practices.~~
 5. Provide accommodations of a personal nature, including, but not limited to, eyeglasses, hearing aids, or prostheses, except under the same terms and conditions as such items are provided to the employer's employees ~~generally; or generally.~~
 6. Repealed by Session Laws 2002-163, s. 2, effective January 1, 2003.
 7. Make any changes that would impose on the employer an undue hardship.
 - b. With regard to a place of public accommodations and a covered governmental entity, making reasonable efforts to accommodate the disabling conditions of a person with a disability, including, but not limited to, making facilities accessible to and usable by persons with a disability, redesigning equipment, providing auxiliary aids and services needed to make aurally and visually delivered materials available, as needed, to individuals with hearing or sight impairments, providing mechanical aids or other assistance, or using alternative accessible ~~locations, provided that reasonable~~ locations. Reasonable accommodations does do not require efforts which would impose an undue hardship on the entity involved.

- (11) ~~"Undue hardship" means a~~ Undue hardship. – A significant difficulty or expense. The following factors shall be considered in determining whether an accommodation would impose an undue hardship:
...."

SECTION 15. This act does not affect the coverage, eligibility, rights, responsibilities, or provision of State or federal services or benefits for individuals who have been diagnosed with mental retardation and whose diagnosis has not been changed to a diagnosis of intellectual disability.

SECTION 16. Sections 1 and 2 become effective October 1, 2018, and apply to proceedings commenced on or after that date. Sections 3 and 5 become effective December 1, 2018, and apply to hearings or trials commenced on or after that date. Sections 4 and 8 become effective December 1, 2018, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of June, 2018.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 9:28 a.m. this 22nd day of June, 2018