

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 1147
SENATE BILL 986

AN ACT TO MAKE TECHNICAL CORRECTIONS TO CHAPTER 711 OF THE 1977 SESSION LAWS AND TO RESTORE RESTITUTION PROVISIONS ENACTED BY CHAPTERS 364 AND 614 OF THE 1977 SESSION LAWS THAT WERE INADVERTENTLY REPEALED BY CHAPTER 711 OF THE 1977 SESSION LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1021(d) as the same appears in the 1977 Cumulative Supplement to Volume 1C of the General Statutes is hereby rewritten to read as follows:

"(d) When restitution or reparation by the defendant is a part of the plea arrangement agreement, if the judge concurs in the proposed disposition he may order that restitution or reparation be made as a condition of special probation pursuant to the provisions of G.S. 15A-1351, or probation pursuant to the provisions of G.S. 15A-1343(d). If an active sentence is imposed the court may order that the defendant make restitution or reparation out of any earnings gained by the defendant if he attains work release privileges under the provisions of G.S. 148-33.1, or that restitution or reparation be imposed as a condition of parole in accordance with the provisions of G.S. 148-57.1. The order providing for restitution or reparation shall be in accordance with the applicable provisions of G.S. 15A-1343(d).

When restitution or reparation is ordered as a part of a plea arrangement or a condition of parole or work release privileges, the sentencing court shall enter as a part of the commitment that restitution or reparation is ordered as a part of a plea arrangement. The Administrative Office of the Courts shall prepare and distribute forms which provide for ample space to make restitution or reparation orders incident to commitments."

Sec. 2. G.S. 15A-1221 as the same appears in the 1977 Cumulative Supplement to Volume 1C of the General Statutes is hereby amended by adding "(a)" on the first line just prior to the word "The" and by adding a new subsection (b) to read as follows:

"(b) At no time during the selection of the jury or during trial may any person read the indictment to the prospective jurors or to the jury."

Sec. 3. G.S. 15A-1236(a)(3) as the same appears in the 1977 Cumulative Supplement to Volume 1C of the General Statutes is hereby amended by deleting the ";" after the word "case" and by adding after the word "case" the phrase "until they begin their deliberations."

Sec. 4. G.S. 15A-1301 is amended by adding the following sentence at the end thereof:

"When the commitment is to a sentence of imprisonment, the commitment must include the identification of the offense or offenses for which the defendant was convicted and, if the sentences are consecutive, the maximum sentence allowed by law upon conviction of each offense, and, if the sentences are concurrent or consolidated, the longest of the maximum sentences allowed by law upon conviction of any of the offenses."

Sec. 4A. G.S. 15A-1341(a), as it appears in the 1977 Cumulative Supplement to Volume 1C, is rewritten to read as follows:

"§ 15A-1341. Probation generally. — (a) Use of Probation. A person who has been convicted of any noncapital criminal offense not punishable by a minimum term of life imprisonment or a

minimum term without benefit of probation may be placed on probation as provided by this Article."

Sec. 5. G.S. 15A-1341(b) as the same appears in the 1977 Cumulative Supplement to Volume 1C of the General Statutes is amended by adding the words "or assignment to" after the word "by" in line 3.

Sec. 6. G.S. 15A-1342(d) as the same appears in the 1977 Cumulative Supplement to Volume 1C of the General Statutes is amended to delete the words "all probationers" found on lines 1 and 2 and to substitute for them the words "the cases of each probationer" and by adding a new sentence "The probation officer must give reasonable notice to the probationer, and the probationer may appear." after "years." on line 4.

Sec. 7. G.S. 15A-1342(e) as the same appears in the 1977 Cumulative Supplement to Volume 1C of the General Statutes is amended to delete the word "Probationers" on line 1 and to substitute for it the words "Supervised probationers".

Sec. 8. G.S. 15A-1343(b)(6) as the same appears in the 1977 Cumulative Supplement to Volume 1C of the General Statutes is rewritten to read as follows:

"(6) Make restitution or reparation as provided in subsection (d)."

Sec. 9. G.S. 15A-1343(b) is amended to renumber subdivision (17) to (18) and to add a new subdivision (17) to read as follows:

"(17) Within the first 30 days of his probation, visit, with his probation officer, a prison unit maintained by the Department of Correction for a tour thereof so that he may better appreciate the consequences of probation revocation."

Sec. 10. G.S. 15A-1343 as the same appears in the 1977 Cumulative Supplement to Volume 1C of the General Statutes is amended to add thereto a new subsection (d), to read:

"(d) Restitution as a condition of probation. As a condition of probation, a defendant may be required to make restitution or reparation to an aggrieved party or parties who shall be named by the court for the damage or loss caused by the defendant arising out of the offense or offenses for which the defendant has been convicted. When restitution or reparation is a condition imposed, the court shall take into consideration the resources of the defendant, his ability to earn, his obligation to support dependents, and such other matters as shall pertain to his ability to make restitution or reparation. The amount must be limited to that supported by the record, and the court may order partial restitution or reparation when it appears that the damage or loss caused by the offense or offenses is greater than that which the defendant is able to pay. The court shall fix the manner of performing the restitution or reparation, and in doing so, the court may take into consideration the recommendation of the probation officer. An order providing for restitution or reparation shall in no way abridge the right of any aggrieved party to bring a civil action against the defendant for money damages arising out of the offense or offenses committed by the defendant, but any amount paid by the defendant under the terms of an order as provided herein shall be credited against any judgment rendered against the defendant in such civil action. As used herein, 'restitution' shall mean compensation for damage or loss as could ordinarily be recovered by an aggrieved party in a civil action. As used herein, 'reparation' shall include but not be limited to the performing of community services, volunteer work, or doing such other acts or things as shall aid the defendant in his rehabilitation. As used herein, 'aggrieved party' shall include individuals, firms, corporations, associations or other organizations, and government agencies, whether federal, State or local. Provided, that no government agency shall benefit by way of restitution or reparation except for particular damage or loss to it over and above its normal operating costs. Provided further, that no third party shall benefit by way of restitution or reparation as a result of the liability of that third party to pay indemnity to an aggrieved party for the damage or loss caused by the defendant. Restitution or reparation measures are ancillary remedies to promote rehabilitation of criminal offenders and to provide for compensation to victims of crime, and shall not be

construed to be a fine or other punishment as provided for in the Constitution and laws of this State."

Sec. 11. G.S. 15A-1344(a) as the same appears in the 1977 Cumulative Supplement to Volume 1C of the General Statutes is amended to delete the words "if the hearing is to be held in any other district." on line 8 and to substitute for them the words "of any hearing to affect probation substantially."

Sec. 11A. G.S. 15A-1344(d), as it appears in the 1977 Cumulative Supplement to Volume 1C, is amended on line 13 by changing the period after the word "sentencing" to a semicolon and by adding the following proviso:

"provided that probation may not be revoked solely for conviction of a misdemeanor unless it is punishable by imprisonment for more than 30 days."

Sec. 11B. G.S. 90-96(a) is amended by adding after the first sentence the following: "Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. The provisions of the preceding sentence shall apply to all offenses committed on or after July 1, 1977".

Sec. 12. G.S. 15A-1345(a) as the same appears in the 1977 Cumulative Supplement to Volume 1C of the General Statutes is amended to add the phrase "by a law enforcement officer or probation officer" on line 3 after the word "probation" and before the word "upon".

Sec. 13. G.S. 15A-1345(d) as the same appears in the 1977 Cumulative Supplement to Volume 1C of the General Statutes is amended to delete the words "probation was imposed" on lines 3 and 4 and to substitute for them the words "the alleged violation occurred".

Sec. 13A. G.S. 15A-1344(e), as it appears in the 1977 Cumulative Supplement to Volume 1C, is amended on lines 6 and 7 by substituting the word "continuous" for the word "consecutive"; and on lines 6 and 9 by substituting the word "noncontinuous" for the word "nonconsecutive".

Sec. 14. G.S. 15A-1347 as the same appears in the 1977 Cumulative Supplement to Volume 1C of the General Statutes is amended to add the sentence "When the defendant appeals to the superior court because a district court has found he violated probation and has activated his sentence or imposed special probation, and the superior court, after a de novo revocation hearing, orders that the defendant continue on probation under the same or modified conditions, the superior court is considered the court that originally imposed probation with regard to future revocation proceedings and other purposes of this Article." after the word "district." on line 11.

Sec. 15. G.S. 15A-1351(a) as the same appears in the 1977 Cumulative Supplement to Volume 1C of the General Statutes is amended to add the sentences "If imprisonment is for continuous periods, the confinement may be in the custody of either the Department of Correction or a local confinement facility. Noncontinuous periods of imprisonment under special probation may only be served in a designated local confinement or treatment facility." after the word "determines." on line 9 and before the word "The".

Sec. 16. G.S. 15A-1351(e) as the same appears in the 1977 Cumulative Supplement to Volume 1C of the General Statutes is amended to delete the words "Article 3A" on line 3 and to substitute for them the words "Article 3B".

Sec. 17. G.S. 15A-1351 is amended by adding a new subsection "g" to read as follows:

"(g) Credit. Credit towards a sentence to imprisonment is as provided in Article 19A of Chapter 15 of the General Statutes."

Sec. 18. G.S. 15A-1352 as the same appears in the 1977 Cumulative Supplement to Volume 1C of the General Statutes is amended to delete the words "less than 180 days" on line 5 and to substitute for them the words "of 180 days or less" and to delete the "." on line 6, and to add the following phrase at the end of line 6 ", except as provided in G.S. 148-32.1(b)."

Sec. 19. G.S. 15A-1355 is amended by repealing subsection 15A-1355(b) and by relettering subsection (c) as subsection (b).

Sec. 19A. G.S. 15A-1371(a), as it appears in the 1977 Cumulative Supplement to Volume 1C, is amended in the third line by striking the words "life imprisonment or".

Sec. 20. G.S. 15A-1371(a) as the same appears in the 1977 Cumulative Supplement to Volume 1C of the General Statutes is amended to delete the words "G.S. 15A-1355(b) and (c)" on lines 9 and 10 and to substitute for them the words "G.S. 15A-1355(b) and Article 19A of Chapter 15 of the General Statutes." and by rewriting the last sentence of subsection (a) to read as follows:

"A prisoner whose sentence includes a minimum sentence identical to a minimum sentence required by law is eligible for release on parole upon completion of one-fourth of the minimum time, unless the order of commitment indicates that the minimum sentence was not imposed solely because required bylaw."

Sec. 21. G.S. 15A-1371(b) as the same appears in the 1977 Cumulative Supplement to Volume 1C of the General Statutes is amended to delete the words "At least 60" found on line 4 and again on line 6 and to substitute for them the words "within the period of 90"; to add the words "the prisoner and" after the word "notify" and before the word "the" on line 10; to delete the words "issue a formal order granting or denying parole." on lines 14 and 15 and to substitute for them the words "give the prisoner written notice of its decision."; and to delete the words "issue a formal order granting or denying parole" on lines 17 and 18 and to substitute for them the words "give the prisoner written notice of its decision".

Sec. 22. G.S. 15A-1371(g) as the same appears in the 1977 Cumulative Supplement to Volume 1C of the General Statutes is amended to add the word "maximum" on line 2 after the word "a" and before the word "sentence".

Sec. 23. G.S. 15A-1376(a) as the same appears in the 1977 Cumulative Supplement to Volume 1C of the General Statutes is amended to add the words "by a law enforcement officer or a parole officer" on line 2 after the word "arrest" and before the word "for".

Sec. 24. G.S. 15A-1376(b) as the same appears in the 1977 Cumulative Supplement to Volume 1C of the General Statutes is amended to add the words "or a continuance is requested by the parolee" on line 3 after the word "hearing" and before the "," to delete the word "four" on line 4 and on line 7 and to substitute for it the word "seven"; and to add a new sentence at the end of G.S. 15A-1376(b) to read as follows: "If the parolee is not within the State, his preliminary hearing is as prescribed by G.S. 148-65.1A."

Sec. 25. G.S. 15A-1376(d) as the same appears in the 1977 Cumulative Supplement to Volume 1C of the General Statutes is amended to delete the word "court" on line 6 and to substitute for it the words "hearing officer".

Sec. 26. G.S. 15A-1376(e) is rewritten to read as follows:

"(e) Revocation Hearing. Before finally revoking parole, the Parole Commission must, unless the parolee waived the hearing or the time limit, provide a hearing within 45 days of the parolee's reconfinement to determine whether to revoke parole finally. The Parole Commission must adopt regulations governing the hearing and must file and publish them as provided in Article 5 of Chapter 150A of the General Statutes."

Sec. 27. G.S. 15A-1377 is repealed.

Sec. 28. G.S. 15A-1446(d)(7) is repealed.

Sec. 29. G.S. 15A-1448 is amended to rewrite the caption to read "Procedures for taking appeal." and to rewrite subdivisions (3) and (4) to read:

"(3) The jurisdiction of the trial court with regard to the case is divested, except as to actions authorized by G.S. 15A-1453, when notice of appeal has been given and the period described in (1) and (2) has expired.

- (4) If there has been no ruling by the trial judge on a motion for appropriate relief within 10 days after motion for such relief has been made, the motion shall be deemed denied."

Sec. 30. Chapter 711 of the 1977 Session Laws of North Carolina is amended to add a new section as follows:

"**Sec. 16A.** G.S. 15-196.1, as the same appears in the 1975 Replacement Volume of 1C of the General Statutes, is amended to delete therefrom the words 'The term of a determinate sentence or the minimum and maximum term of an indeterminate' from the beginning of the first sentence and to substitute for them the words 'The minimum and maximum term of a'."

Sec. 31. Section 38 of Chapter 711 of the 1977 Session Laws of North Carolina is rewritten to read as follows:

"**Sec. 38.** The eligibility for parole and work release of prisoners sentenced before the effective date of this act is determined by the law applicable prior to the effective date of this act."

Sec. 32. Section 39 of Chapter 711 of the 1977 Session Laws of North Carolina is amended to delete the words "Article 85, 'Parole'" and to substitute for them the words "this act regarding parole".

Sec. 33. G.S. 148-33.2(c), as the same appears in the 1978 Replacement Volume to 3C of the General Statutes, is amended to delete the citation to "G.S. 15-199(10)" on line 8 and to substitute for it the citation "G.S. 15A-1343(d)".

Sec. 34. G.S. 148-37(b), as the same appears in the 1978 Replacement Volume 3C of the General Statutes, is amended to delete the words "federal, county or city facilities located in North Carolina," on lines 4 and 5 and to substitute for them the words "any county or any city facility located in North Carolina, or any facility of the United States Bureau of Prisons,".

Sec. 35. G.S. 148-49.16(b), as the same appears in the 1978 Replacement Volume 3C of the General Statutes, is amended to delete the words "Article 4 of this Chapter" from lines 3 and 4 and to substitute for them the words "Article 85 of Chapter 15A of the General Statutes".

Sec. 36. G.S. 148-57.1(c), as the same appears in the 1978 Replacement Volume 3C of the General Statutes, is hereby amended to delete the citation to "G.S. 15-199(10)" on line 10 and to substitute for it the citation "G.S. 15A-1343(d)".

Sec. 37. Section 4 of this act shall become effective on August 1, 1978. The remaining sections of this act shall become effective on July 1, 1978.

In the General Assembly read three times and ratified, this the 16th day of June, 1978.