

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

SESSION LAW 2011-192  
HOUSE BILL 642

AN ACT TO IMPLEMENT CERTAIN RECOMMENDATIONS OF THE JUSTICE REINVESTMENT PROJECT AND TO PROVIDE THAT THE ACT SHALL BE ENTITLED "THE JUSTICE REINVESTMENT ACT OF 2011."

The General Assembly of North Carolina enacts:

**PART I. STRENGTHEN PROBATION SUPERVISION**

**SECTION 1.(a)** G.S. 15A-1340.11(2) reads as rewritten:

"(2) Community punishment. – A sentence in a criminal case that does not include an active punishment or assignment to a drug treatment court, or special probation as defined in G.S. 15A-1351(a). ~~punishment, an intermediate punishment, or any of the conditions of probation listed in subdivision (6) of this section.~~ It may include any one or more of the conditions set forth in G.S. 15A-1343(a1)."

**SECTION 1.(b)** G.S. 15A-1340.11(6) reads as rewritten:

"(6) Intermediate punishment. – A sentence in a criminal case that places an offender on supervised probation. ~~probation and includes at least one~~ It may include drug treatment court, special probation as defined in G.S. 15A-1351(a), and one or more of the following conditions: ~~conditions~~ set forth in G.S. 15A-1343(a1).

- a. ~~Special probation as defined in G.S. 15A-1351(a).~~
- b. ~~Assignment to a residential program.~~
- e. ~~House arrest with electronic monitoring.~~
- d. ~~Intensive supervision.~~
- e. ~~Assignment to a day-reporting center.~~
- f. ~~Assignment to a drug treatment court program."~~

**SECTION 1.(c)** G.S. 15A-1343 is amended by adding a new subsection to read:

"(a1) Community and Intermediate Probation Conditions. – In addition to any conditions a court may be authorized to impose pursuant to G.S. 15A-1343(b1), the court may include any one or more of the following conditions as part of a community or intermediate punishment:

- (1) House arrest with electronic monitoring.
- (2) Perform community service.
- (3) Submission to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods.
- (4) Substance abuse assessment, monitoring, or treatment.
- (5) Participation in an educational or vocational skills development program, including an evidence-based program.



- (6) Submission to satellite-based monitoring, pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.40(a)(2)."

**SECTION 1.(d)** G.S. 15A-1343.2(e) reads as rewritten:

"(e) Delegation to Probation Officer in Community Punishment. – Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Community Corrections in the Department of Correction may require an offender sentenced to community punishment ~~to~~to do any of the following:

- (1) Perform up to 20 hours of community service, and pay the fee prescribed by law for this ~~supervision;~~supervision.
- (2) Report to the offender's probation officer on a frequency to be determined by the ~~officer;~~ officer.
- (3) Submit to substance abuse assessment, monitoring or treatment.
- (4) Submit to house arrest with electronic monitoring.
- (5) Submit to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods.
- (6) Submit to a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored electronically.
- (7) Participate in an educational or vocational skills development program, including an evidence-based program.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

The probation officer may exercise authority delegated to him or her by the court pursuant to subsection (e) of this section after administrative review and approval by a Chief Probation Officer. The offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. However, the offender shall have no right of review if he or she has signed a written waiver of rights as required by this subsection. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court or the offender is determined to be high risk based on the results of the risk assessment in G.S. 15A-1343.2, except that the condition at subdivision (5) of this subsection may not be imposed unless the Division determines that the offender failed to comply with one or more of the conditions imposed by the court. Nothing in this section shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345.

~~If the probation officer exercises authority delegated to him or her by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court.~~

The Department shall adopt guidelines and procedures to implement the requirements of this section, which shall include a supervisor's approval prior to exercise of the delegation of authority authorized by this section. Prior to imposing confinement pursuant to subdivision (5) of this subsection, the probationer must first be presented with a violation report, with the alleged violations noted and advised of the right (i) to a hearing before the court on the alleged violation, with the right to present relevant oral and written evidence; (ii) to have counsel at the

hearing, and that one will be appointed if the probationer is indigent; (iii) to request witnesses who have relevant information concerning the alleged violations; and (iv) to examine any witnesses or evidence. Upon the signing of a waiver of rights by the probationer, with both the probation officer and a supervisor signing as witnesses, the probationer may be confined for the period designated on the violation report."

**SECTION 1.(e)** G.S. 15A-1343.2(f) reads as rewritten:

"(f) Delegation to Probation Officer in Intermediate Punishments. – Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Community Corrections in the Department of Correction may require an offender sentenced to intermediate punishment ~~to~~to do any of the following:

- (1) Perform up to 50 hours of community service, and pay the fee prescribed by law for this ~~supervision;~~supervision.
- (2) Submit to a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored ~~electronically;~~electronically.
- (3) Submit to substance abuse assessment, monitoring or ~~treatment;~~treatment.
- (4) Participate in an educational or vocational skills development ~~program.~~program, including an evidence-based program.
- (5) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.40(a)(2).
- (6) Submit to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods.
- (7) Submit to house arrest with electronic monitoring.
- (8) Report to the offender's probation officer on a frequency to be determined by the officer.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

The probation officer may exercise authority delegated to him or her by the court pursuant to subsection (f) of this section after administrative review and approval by a Chief Probation Officer. The offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. However, the offender shall have no right of review if he or she has signed a written waiver of rights as required by this subsection. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court or the offender is determined to be high risk based on the results of the risk assessment in G.S. 15A-1343.2, except that the condition at subdivision (6) of this subsection may not be imposed unless the Division determines that the offender failed to comply with one or more of the conditions imposed by the court. Nothing in this section shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345.

~~If the probation officer exercises authority delegated to him or her by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court.~~

The Department shall adopt guidelines and procedures to implement the requirements of this section, which shall include a supervisor's approval prior to exercise of the delegation of authority authorized by this section. Prior to imposing confinement pursuant to subdivision (6) of this subsection, the probationer must first be presented with a violation report, with the alleged violations noted and advised of the right (i) to a hearing before the court on the alleged violation, with the right to present relevant oral and written evidence; (ii) to have counsel at the hearing, and that one will be appointed if the probationer is indigent; (iii) to request witnesses who have relevant information concerning the alleged violations; and (iv) to examine any witnesses or evidence. Upon the signing of a waiver of rights by the probationer, with both the probation officer and a supervisor signing as witnesses, the probationer may be confined for the period designated on the violation report."

**SECTION 1.(f)** G.S. 15A-1343.2 is amended by adding a new subsection to read:

"(b1) Departmental Risk Assessment by Validated Instrument Required. – As part of the probation program developed by the Department of Correction pursuant to subsection (b) of this section, the Department of Correction shall use a validated instrument to assess each probationer for risk of reoffending and shall place a probationer in a supervision level based on the probationer's risk of reoffending and criminogenic needs."

**SECTION 1.(g)** G.S. 15A-1343(b1)(3b) is repealed.

**SECTION 1.(h)** G.S. 15A-1340.11(3) is repealed.

**SECTION 1.(i)** G.S. 15A-1340.11(5) is repealed.

**SECTION 1.(j)** G.S. 15A-1340.11(8) is repealed.

**SECTION 1.(k)** G.S. 15A-1343.2(c) reads as rewritten:

"(c) Probation Caseload Goals. – It is the goal of the General Assembly that, subject to the availability of funds, caseloads for probation officers supervising persons who are determined to be high or moderate risk of rearrest as determined by the Department's validated risk assessment should not exceed an average of 60 offenders per officer, sentenced to community punishment should not exceed an average of 90 offenders per officer, and caseloads for offenders sentenced to intermediate punishments should not exceed an average of 60 offenders per officer by July 1, 1998."

**SECTION 1.(l)** This section becomes effective December 1, 2011, and applies to persons placed on probation based on offenses which occur on or after December 1, 2011; however, this section and the provisions of this act requiring the Department of Correction to adopt guidelines and procedures are effective when this act becomes law.

## **PART II. POST-RELEASE SUPERVISION CHANGES**

**SECTION 2.(a)** G.S. 15A-1368.1 reads as rewritten:

### **"§ 15A-1368.1. Applicability of Article 84A.**

This Article applies to all felons in Class B1 through Class E sentenced to an active punishment under Article 81B of this Chapter, but does not apply to felons in Class A and Class B1 sentenced to life imprisonment without parole. Prisoners subject to Articles 85 and 85A of this Chapter are excluded from this Article's coverage."

**SECTION 2.(b)** G.S. 15A-1368.2 reads as rewritten:

### **"§ 15A-1368.2. Post-release supervision eligibility and procedure.**

(a) A prisoner to whom this Article applies shall be released from prison for post-release supervision on the date equivalent to his maximum imposed prison term less ~~nine months~~, 12 months in the case of Class B1 through E felons and less nine months in the case of Class F through I felons, less any earned time awarded by the Department of Correction or the custodian of a local confinement facility under G.S. 15A-1340.13(d). If a prisoner has not been awarded any earned time, the prisoner shall be released for post-release supervision on the date equivalent to his maximum prison term less ~~nine months~~, 12 months for Class B1 through E felons and less nine months for Class F through I felons.

(b) A prisoner shall not refuse post-release supervision.

(c) A supervisee's period of post-release supervision shall be for a period of ~~nine months~~, 12 months in the case of Class B1 through E felons and nine months in the case of Class F through I felons, unless the offense is an offense for which registration is required pursuant to Article 27A of Chapter 14 of the General Statutes. For offenses subject to the registration requirement of Article 27A of Chapter 14 of the General Statutes, the period of post-release supervision is five years. The conditions of post-release supervision are as authorized in G.S. 15A-1368.5.

...."

**SECTION 2.(c)** G.S. 15A-1368.4(e) is amended by adding a new subdivision to read:

"(7a) Not to abscond, by willfully avoiding supervision or by willfully making the supervisee's whereabouts unknown to the supervising probation officer."

**SECTION 2.(d)** G.S. 15A-1368.3(c) reads as rewritten:

"(c) Effect of Violation. – If the supervisee violates a condition, described in G.S. 15A-1368.4, at any time before the termination of the supervision period, the Commission may continue the supervisee on the existing supervision, with or without modifying the conditions, or if continuation or modification is not appropriate, may revoke post-release supervision as provided in G.S. 15A-1368.6 and reimprison the supervisee for a term consistent with the following requirements:

- (1) The superviseeSupervisees who were convicted of an offense for which registration is required under Article 27A of Chapter 14 of the General Statutes and supervisees whose supervision is revoked for a violation of the required controlling condition under G.S. 15A-1368.4(b) or for absconding in violation of G.S. 15A-1368.4(e)(7a) will be returned to prison up to the time remaining on ~~his~~their maximum imposed ~~term~~terms. All other supervisees will be returned to prison for three months and may be returned for three months on each of two subsequent violations, after which supervisees who were Class B1 through E felons may be returned to prison up to the time remaining on their maximum imposed terms.
- (2) The supervisee shall not receive any credit for days on post-release supervision against the maximum term of imprisonment imposed by the court under G.S. 15A-1340.13.
- (3) Pursuant to Article 19A of Chapter 15, the Department of Correction shall award a prisoner credit against any term of reimprisonment for all time spent in custody as a result of revocation proceedings under G.S. 15A-1368.6.
- (4) The prisoner is eligible to receive earned time credit against the maximum prison term as provided in G.S. 15A-1340.13(d) for time served in prison after the revocation."

**SECTION 2.(e)** G.S. 15A-1340.17(d) reads as rewritten:

"(d) Maximum Sentences Specified for Class F through Class I Felonies. – Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class F through Class I felonies. The first figure in each cell in the table is the minimum term and the second is the maximum term.

<del>3-4</del>	<del>4-5</del>	<del>5-6</del>	<del>6-8</del>	<del>7-9</del>	<del>8-10</del>	<del>9-11</del>	<del>10-12</del>
<del>11-14</del>	<del>12-15</del>	<del>13-16</del>	<del>14-17</del>	<del>15-18</del>	<del>16-20</del>	<del>17-21</del>	<del>18-22</del>
<del>19-23</del>	<del>20-24</del>	<del>21-26</del>	<del>22-27</del>	<del>23-28</del>	<del>24-29</del>	<del>25-30</del>	<del>26-32</del>
<del>27-33</del>	<del>28-34</del>	<del>29-35</del>	<del>30-36</del>	<del>31-38</del>	<del>32-39</del>	<del>33-40</del>	<del>34-41</del>
<del>35-42</del>	<del>36-44</del>	<del>37-45</del>	<del>38-46</del>	<del>39-47</del>	<del>40-48</del>	<del>41-50</del>	<del>42-51</del>

<u>43-52</u>	<u>44-53</u>	<u>45-54</u>	<u>46-56</u>	<u>47-57</u>	<u>48-58</u>	<u>49-59</u>	
<u>3-13</u>	<u>4-14</u>	<u>5-15</u>	<u>6-17</u>	<u>7-18</u>	<u>8-19</u>	<u>9-20</u>	<u>10-21</u>
<u>11-23</u>	<u>12-24</u>	<u>13-25</u>	<u>14-26</u>	<u>15-27</u>	<u>16-29</u>	<u>17-30</u>	<u>18-31</u>
<u>19-32</u>	<u>20-33</u>	<u>21-35</u>	<u>22-36</u>	<u>23-37</u>	<u>24-38</u>	<u>25-39</u>	<u>26-41</u>
<u>27-42</u>	<u>28-43</u>	<u>29-44</u>	<u>30-45</u>	<u>31-47</u>	<u>32-48</u>	<u>33-49</u>	<u>34-50</u>
<u>35-51</u>	<u>36-53</u>	<u>37-54</u>	<u>38-55</u>	<u>39-56</u>	<u>40-57</u>	<u>41-59</u>	<u>42-60</u>
<u>43-61</u>	<u>44-62</u>	<u>45-63</u>	<u>46-65</u>	<u>47-66</u>	<u>48-67</u>	<u>49-68"</u>	

**SECTION 2.(f)** G.S. 15A-1340.17(e) reads as rewritten:

"(e) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms up to 339 Months. – Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class B1 through Class E felonies. The first figure in each cell of the table is the minimum term and the second is the maximum term.

<del>15-27</del>	<del>16-29</del>	<del>17-30</del>	<del>18-31</del>	<del>19-32</del>	<del>20-33</del>	<del>21-35</del>	<del>22-36</del>
<del>23-37</del>	<del>24-38</del>	<del>25-39</del>	<del>26-41</del>	<del>27-42</del>	<del>28-43</del>	<del>29-44</del>	<del>30-45</del>
<del>31-47</del>	<del>32-48</del>	<del>33-49</del>	<del>34-50</del>	<del>35-51</del>	<del>36-53</del>	<del>37-54</del>	<del>38-55</del>
<del>39-56</del>	<del>40-57</del>	<del>41-59</del>	<del>42-60</del>	<del>43-61</del>	<del>44-62</del>	<del>45-63</del>	<del>46-65</del>
<del>47-66</del>	<del>48-67</del>	<del>49-68</del>	<del>50-69</del>	<del>51-71</del>	<del>52-72</del>	<del>53-73</del>	<del>54-74</del>
<del>55-75</del>	<del>56-77</del>	<del>57-78</del>	<del>58-79</del>	<del>59-80</del>	<del>60-81</del>	<del>61-83</del>	<del>62-84</del>
<del>63-85</del>	<del>64-86</del>	<del>65-87</del>	<del>66-89</del>	<del>67-90</del>	<del>68-91</del>	<del>69-92</del>	<del>70-93</del>
<del>71-95</del>	<del>72-96</del>	<del>73-97</del>	<del>74-98</del>	<del>75-99</del>	<del>76-101</del>	<del>77-102</del>	<del>78-103</del>
<del>79-104</del>	<del>80-105</del>	<del>81-107</del>	<del>82-108</del>	<del>83-109</del>	<del>84-110</del>	<del>85-111</del>	<del>86-113</del>
<del>87-114</del>	<del>88-115</del>	<del>89-116</del>	<del>90-117</del>	<del>91-119</del>	<del>92-120</del>	<del>93-121</del>	<del>94-122</del>
<del>95-123</del>	<del>96-125</del>	<del>97-126</del>	<del>98-127</del>	<del>99-128</del>	<del>100-129</del>	<del>101-131</del>	<del>102-132</del>
<del>103-133</del>	<del>104-134</del>	<del>105-135</del>	<del>106-137</del>	<del>107-138</del>	<del>108-139</del>	<del>109-140</del>	<del>110-141</del>
<del>111-143</del>	<del>112-144</del>	<del>113-145</del>	<del>114-146</del>	<del>115-147</del>	<del>116-149</del>	<del>117-150</del>	<del>118-151</del>
<del>119-152</del>	<del>120-153</del>	<del>121-155</del>	<del>122-156</del>	<del>123-157</del>	<del>124-158</del>	<del>125-159</del>	<del>126-161</del>
<del>127-162</del>	<del>128-163</del>	<del>129-164</del>	<del>130-165</del>	<del>131-167</del>	<del>132-168</del>	<del>133-169</del>	<del>134-170</del>
<del>135-171</del>	<del>136-173</del>	<del>137-174</del>	<del>138-175</del>	<del>139-176</del>	<del>140-177</del>	<del>141-179</del>	<del>142-180</del>
<del>143-181</del>	<del>144-182</del>	<del>145-183</del>	<del>146-185</del>	<del>147-186</del>	<del>148-187</del>	<del>149-188</del>	<del>150-189</del>
<del>151-191</del>	<del>152-192</del>	<del>153-193</del>	<del>154-194</del>	<del>155-195</del>	<del>156-197</del>	<del>157-198</del>	<del>158-199</del>
<del>159-200</del>	<del>160-201</del>	<del>161-203</del>	<del>162-204</del>	<del>163-205</del>	<del>164-206</del>	<del>165-207</del>	<del>166-209</del>
<del>167-210</del>	<del>168-211</del>	<del>169-212</del>	<del>170-213</del>	<del>171-215</del>	<del>172-216</del>	<del>173-217</del>	<del>174-218</del>
<del>175-219</del>	<del>176-221</del>	<del>177-222</del>	<del>178-223</del>	<del>179-224</del>	<del>180-225</del>	<del>181-227</del>	<del>182-228</del>
<del>183-229</del>	<del>184-230</del>	<del>185-231</del>	<del>186-233</del>	<del>187-234</del>	<del>188-235</del>	<del>189-236</del>	<del>190-237</del>
<del>191-239</del>	<del>192-240</del>	<del>193-241</del>	<del>194-242</del>	<del>195-243</del>	<del>196-245</del>	<del>197-246</del>	<del>198-247</del>
<del>199-248</del>	<del>200-249</del>	<del>201-251</del>	<del>202-252</del>	<del>203-253</del>	<del>204-254</del>	<del>205-255</del>	<del>206-257</del>
<del>207-258</del>	<del>208-259</del>	<del>209-260</del>	<del>210-261</del>	<del>211-263</del>	<del>212-264</del>	<del>213-265</del>	<del>214-266</del>
<del>215-267</del>	<del>216-269</del>	<del>217-270</del>	<del>218-271</del>	<del>219-272</del>	<del>220-273</del>	<del>221-275</del>	<del>222-276</del>
<del>223-277</del>	<del>224-278</del>	<del>225-279</del>	<del>226-281</del>	<del>227-282</del>	<del>228-283</del>	<del>229-284</del>	<del>230-285</del>
<del>231-287</del>	<del>232-288</del>	<del>233-289</del>	<del>234-290</del>	<del>235-291</del>	<del>236-293</del>	<del>237-294</del>	<del>238-295</del>
<del>239-296</del>	<del>240-297</del>	<del>241-299</del>	<del>242-300</del>	<del>243-301</del>	<del>244-302</del>	<del>245-303</del>	<del>246-305</del>
<del>247-306</del>	<del>248-307</del>	<del>249-308</del>	<del>250-309</del>	<del>251-311</del>	<del>252-312</del>	<del>253-313</del>	<del>254-314</del>
<del>255-315</del>	<del>256-317</del>	<del>257-318</del>	<del>258-319</del>	<del>259-320</del>	<del>260-321</del>	<del>261-323</del>	<del>262-324</del>
<del>263-325</del>	<del>264-326</del>	<del>265-327</del>	<del>266-329</del>	<del>267-330</del>	<del>268-331</del>	<del>269-332</del>	<del>270-333</del>
<del>271-335</del>	<del>272-336</del>	<del>273-337</del>	<del>274-338</del>	<del>275-339</del>	<del>276-341</del>	<del>277-342</del>	<del>278-343</del>
<del>279-344</del>	<del>280-345</del>	<del>281-347</del>	<del>282-348</del>	<del>283-349</del>	<del>284-350</del>	<del>285-351</del>	<del>286-353</del>
<del>287-354</del>	<del>288-355</del>	<del>289-356</del>	<del>290-357</del>	<del>291-359</del>	<del>292-360</del>	<del>293-361</del>	<del>294-362</del>
<del>295-363</del>	<del>296-365</del>	<del>297-366</del>	<del>298-367</del>	<del>299-368</del>	<del>300-369</del>	<del>301-371</del>	<del>302-372</del>

<del>303-373</del>	<del>304-374</del>	<del>305-375</del>	<del>306-377</del>	<del>307-378</del>	<del>308-379</del>	<del>309-380</del>	<del>310-381</del>
<del>311-383</del>	<del>312-384</del>	<del>313-385</del>	<del>314-386</del>	<del>315-387</del>	<del>316-389</del>	<del>317-390</del>	<del>318-391</del>
<del>319-392</del>	<del>320-393</del>	<del>321-395</del>	<del>322-396</del>	<del>323-397</del>	<del>324-398</del>	<del>325-399</del>	<del>326-401</del>
<del>327-402</del>	<del>328-403</del>	<del>329-404</del>	<del>330-405</del>	<del>331-407</del>	<del>332-408</del>	<del>333-409</del>	<del>334-410</del>
<del>335-411</del>	<del>336-413</del>	<del>337-414</del>	<del>338-415</del>	<del>339-416</del>			
<u>15-30</u>	<u>16-32</u>	<u>17-33</u>	<u>18-34</u>	<u>19-35</u>	<u>20-36</u>	<u>21-38</u>	<u>22-39</u>
<u>23-40</u>	<u>24-41</u>	<u>25-42</u>	<u>26-44</u>	<u>27-45</u>	<u>28-46</u>	<u>29-47</u>	<u>30-48</u>
<u>31-50</u>	<u>32-51</u>	<u>33-52</u>	<u>34-53</u>	<u>35-54</u>	<u>36-56</u>	<u>37-57</u>	<u>38-58</u>
<u>39-59</u>	<u>40-60</u>	<u>41-62</u>	<u>42-63</u>	<u>43-64</u>	<u>44-65</u>	<u>45-66</u>	<u>46-68</u>
<u>47-69</u>	<u>48-70</u>	<u>49-71</u>	<u>50-72</u>	<u>51-74</u>	<u>52-75</u>	<u>53-76</u>	<u>54-77</u>
<u>55-78</u>	<u>56-80</u>	<u>57-81</u>	<u>58-82</u>	<u>59-83</u>	<u>60-84</u>	<u>61-86</u>	<u>62-87</u>
<u>63-88</u>	<u>64-89</u>	<u>65-90</u>	<u>66-91</u>	<u>67-93</u>	<u>68-94</u>	<u>69-95</u>	<u>70-96</u>
<u>71-98</u>	<u>72-99</u>	<u>73-100</u>	<u>74-101</u>	<u>75-102</u>	<u>76-104</u>	<u>77-105</u>	<u>78-106</u>
<u>79-107</u>	<u>80-108</u>	<u>81-110</u>	<u>82-111</u>	<u>83-112</u>	<u>84-113</u>	<u>85-114</u>	<u>86-115</u>
<u>87-117</u>	<u>88-118</u>	<u>89-119</u>	<u>90-120</u>	<u>91-122</u>	<u>92-123</u>	<u>93-124</u>	<u>94-125</u>
<u>95-126</u>	<u>96-128</u>	<u>97-129</u>	<u>98-130</u>	<u>99-131</u>	<u>100-132</u>	<u>101-134</u>	<u>102-135</u>
<u>103-136</u>	<u>104-137</u>	<u>105-138</u>	<u>106-140</u>	<u>107-141</u>	<u>108-142</u>	<u>109-143</u>	<u>110-144</u>
<u>111-146</u>	<u>112-147</u>	<u>113-148</u>	<u>114-149</u>	<u>115-150</u>	<u>116-152</u>	<u>117-153</u>	<u>118-154</u>
<u>119-155</u>	<u>120-156</u>	<u>121-158</u>	<u>122-159</u>	<u>123-160</u>	<u>124-161</u>	<u>125-162</u>	<u>126-164</u>
<u>127-165</u>	<u>128-166</u>	<u>129-167</u>	<u>130-168</u>	<u>131-170</u>	<u>132-171</u>	<u>133-172</u>	<u>134-173</u>
<u>135-174</u>	<u>136-176</u>	<u>137-177</u>	<u>138-178</u>	<u>139-179</u>	<u>140-180</u>	<u>141-182</u>	<u>142-183</u>
<u>143-184</u>	<u>144-185</u>	<u>145-186</u>	<u>146-188</u>	<u>147-189</u>	<u>148-190</u>	<u>149-191</u>	<u>150-192</u>
<u>151-194</u>	<u>152-195</u>	<u>153-196</u>	<u>154-197</u>	<u>155-198</u>	<u>156-200</u>	<u>157-201</u>	<u>158-202</u>
<u>159-203</u>	<u>160-204</u>	<u>161-206</u>	<u>162-207</u>	<u>163-208</u>	<u>164-209</u>	<u>165-210</u>	<u>166-212</u>
<u>167-213</u>	<u>168-214</u>	<u>169-215</u>	<u>170-216</u>	<u>171-218</u>	<u>172-219</u>	<u>173-220</u>	<u>174-221</u>
<u>175-222</u>	<u>176-224</u>	<u>177-225</u>	<u>178-226</u>	<u>179-227</u>	<u>180-228</u>	<u>181-230</u>	<u>182-231</u>
<u>183-232</u>	<u>184-233</u>	<u>185-234</u>	<u>186-236</u>	<u>187-237</u>	<u>188-238</u>	<u>189-239</u>	<u>190-240</u>
<u>191-242</u>	<u>192-243</u>	<u>193-244</u>	<u>194-245</u>	<u>195-246</u>	<u>196-248</u>	<u>197-249</u>	<u>198-250</u>
<u>199-251</u>	<u>200-252</u>	<u>201-254</u>	<u>202-255</u>	<u>203-256</u>	<u>204-257</u>	<u>205-258</u>	<u>206-260</u>
<u>207-261</u>	<u>208-262</u>	<u>209-263</u>	<u>210-264</u>	<u>211-266</u>	<u>212-267</u>	<u>213-268</u>	<u>214-269</u>
<u>215-270</u>	<u>216-271</u>	<u>217-273</u>	<u>218-274</u>	<u>219-275</u>	<u>220-276</u>	<u>221-278</u>	<u>222-279</u>
<u>223-280</u>	<u>224-281</u>	<u>225-282</u>	<u>226-284</u>	<u>227-285</u>	<u>228-286</u>	<u>229-287</u>	<u>230-288</u>
<u>231-290</u>	<u>232-291</u>	<u>233-292</u>	<u>234-293</u>	<u>235-294</u>	<u>236-296</u>	<u>237-297</u>	<u>238-298</u>
<u>239-299</u>	<u>240-300</u>	<u>241-302</u>	<u>242-303</u>	<u>243-304</u>	<u>244-305</u>	<u>245-306</u>	<u>246-308</u>
<u>247-309</u>	<u>248-310</u>	<u>249-311</u>	<u>250-312</u>	<u>251-314</u>	<u>252-315</u>	<u>253-316</u>	<u>254-317</u>
<u>255-318</u>	<u>256-320</u>	<u>257-321</u>	<u>258-322</u>	<u>259-323</u>	<u>260-324</u>	<u>261-326</u>	<u>262-327</u>
<u>263-328</u>	<u>264-329</u>	<u>265-330</u>	<u>266-332</u>	<u>267-333</u>	<u>268-334</u>	<u>269-335</u>	<u>270-336</u>
<u>271-338</u>	<u>272-339</u>	<u>273-340</u>	<u>274-341</u>	<u>275-342</u>	<u>276-344</u>	<u>277-345</u>	<u>278-346</u>
<u>279-347</u>	<u>280-348</u>	<u>281-350</u>	<u>282-351</u>	<u>283-352</u>	<u>284-353</u>	<u>285-354</u>	<u>286-356</u>
<u>287-357</u>	<u>288-358</u>	<u>289-359</u>	<u>290-360</u>	<u>291-362</u>	<u>292-363</u>	<u>293-364</u>	<u>294-365</u>
<u>295-366</u>	<u>296-368</u>	<u>297-369</u>	<u>298-370</u>	<u>299-371</u>	<u>300-372</u>	<u>301-374</u>	<u>302-375</u>
<u>303-376</u>	<u>304-377</u>	<u>305-378</u>	<u>306-380</u>	<u>307-381</u>	<u>308-382</u>	<u>309-383</u>	<u>310-384</u>
<u>311-386</u>	<u>312-387</u>	<u>313-388</u>	<u>314-389</u>	<u>315-390</u>	<u>316-392</u>	<u>317-393</u>	<u>318-394</u>
<u>319-395</u>	<u>320-396</u>	<u>321-398</u>	<u>322-399</u>	<u>323-400</u>	<u>324-401</u>	<u>325-402</u>	<u>326-404</u>
<u>327-405</u>	<u>328-408</u>	<u>329-407</u>	<u>330-408</u>	<u>331-410</u>	<u>332-411</u>	<u>333-412</u>	<u>334-413</u>
<u>335-414</u>	<u>336-416</u>	<u>337-417</u>	<u>338-418</u>	<u>339-419</u> ".			

**SECTION 2.(g)** G.S. 15A-1340.17(e1) reads as rewritten:

"(e1) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms of 340 Months or More. – Unless provided otherwise in a statute establishing a punishment for a specific crime, when the minimum sentence is 340 months or more, the corresponding maximum term of imprisonment shall be equal to the sum of the minimum term

of imprisonment and twenty percent (20%) of the minimum term of imprisonment, rounded to the next highest month, plus ~~nine~~12 additional months."

**SECTION 2.(h)** G.S. 15A-1368(a)(5) reads as rewritten:

"(5) Maximum imposed term. – The maximum term of imprisonment imposed on an individual prisoner by a court judgment, as described in G.S. 15A-1340.13(c). When a prisoner is serving consecutive prison terms, the maximum imposed term, for purposes of this Article, is the sum of all maximum terms imposed in the court judgment or judgments, less ~~nine~~12 months for each of the second and subsequent sentences imposed for Class B through Class E ~~felonies~~felonies and less nine months for each of the second and subsequent sentences imposed for Class F through Class I felonies."

**SECTION 2.(i)** G.S. 15A-1354(b)(1) reads as rewritten:

"(1) The maximum prison sentence consists of the total of the maximum terms of the consecutive sentences, less ~~nine~~12 months for each of the second and subsequent sentences imposed for Class B through Class E ~~felonies~~felonies and less nine months for each of the second and subsequent sentences imposed for Class F through Class I felonies; and"

**SECTION 2.(j)** This section becomes effective December 1, 2011, and applies to offenses committed on or after that date.

### **PART III. STATUS OFFENSE OF HABITUAL BREAKING AND ENTERING**

**SECTION 3.(a)** Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 2D.

"Habitual Breaking and Entering Status Offense.

**"§ 14-7.25. Definitions.**

The following definitions apply in this Article:

- (1) "Breaking and entering." – The term means any of the following felony offenses:
  - a. First degree burglary (G.S. 14-51).
  - b. Second degree burglary (G.S. 14-51).
  - c. Breaking out of dwelling house burglary (G.S. 14-53).
  - d. Breaking or entering buildings generally (G.S. 14-54(a)).
  - e. Breaking or entering a building that is a place of religious worship (G.S. 14-54.1).
  - f. Any repealed or superseded offense substantially equivalent to any of the offenses in sub-subdivision a., b., c., d., or e. of this subdivision.
  - g. Any offense committed in another jurisdiction substantially similar to any of the offenses in sub-subdivision a., b., c., d., or e. of this subdivision.
- (2) "Convicted." – The person has been adjudged guilty of or has entered a plea of guilty or no contest to the offense of breaking and entering.
- (3) "Status offender." – A person who is a habitual breaking and entering status offender as described in G.S. 14-7.26.

**"§ 14-7.26. Habitual breaking and entering status offender.**

Any person who has been convicted of or pled guilty to one or more prior felony offenses of breaking and entering in any federal court or state court in the United States, or combination thereof, is guilty of the status offense of habitual breaking and entering and may be charged with that status offense pursuant to this Article.



This Article does not apply to a second felony offense of breaking and entering unless it is committed after the conviction of the first felony offense of breaking and entering. For purposes of this Article, felony offenses of breaking and entering committed before the person is 18 years of age shall not constitute more than one felony of breaking and entering. Any felony to which a pardon has been extended shall not, for the purposes of this Article, constitute a felony offense of breaking and entering.

**"§ 14-7.27. Punishment.**

When any person is charged with a felony offense of breaking and entering and is also charged with being a status offender as defined in G.S. 14-7.26, the person must, upon conviction, be sentenced and punished as a status offender as provided by this Article.

**"§ 14-7.28. Charge of habitual breaking and entering status offender.**

(a) The district attorney, in his or her discretion, may charge a person with the status offense of habitual breaking and entering pursuant to this Article. To sustain a conviction of a person as a status offender, the person must be charged separately for the felony offense of breaking and entering and for the habitual breaking and entering status offense. The indictment charging the defendant as a status offender shall be separate from the indictment charging the person with the principal felony offense of breaking and entering.

(b) An indictment that charges a person with being a status offender must set forth the date that the prior felony offense of breaking and entering was committed, the name of the state or other sovereign against whom the felony offense of breaking and entering was committed, the dates that the plea of guilty was entered into or conviction returned in the felony offense of breaking and entering, and the identity of the court in which the plea or conviction took place. No defendant charged with being a status offender in a bill of indictment shall be required to go to trial on the charge within 20 days of the finding of a true bill by the grand jury; provided, the defendant may waive this 20-day period.

**"§ 14-7.29. Evidence of prior convictions of breaking and entering.**

In all cases in which a person is charged under the provisions of this Article with being a status offender, the record of prior conviction of the felony offense of breaking and entering shall be admissible in evidence, but only for the purpose of proving that the person has been convicted of a former felony offense of breaking and entering. A prior conviction may be proved by stipulation of the parties or by the original or a certified copy of the court record of the prior conviction. The original or certified copy of the court record, bearing the same name as that by which the defendant is charged, shall be prima facie evidence that the defendant named therein is the same as the defendant before the court and shall be prima facie evidence of the facts set out therein.

**"§ 14-7.30. Verdict and judgment.**

(a) When an indictment charges a person with a felony offense of breaking and entering as provided by this Article and an indictment also charges that the person is a status offender, the defendant shall be tried for the principal offense of breaking and entering as provided by law. The indictment that the person is a status offender shall not be revealed to the jury unless the jury shall find that the defendant is guilty of the principal felony offense of breaking and entering with which the defendant is charged.

(b) If the jury finds the defendant guilty of the felony offense of breaking and entering, the bill of indictment charging the defendant as a status offender may be presented to the same jury. Except that the same jury may be used, the proceedings shall be as if the issue of status offender were a principal charge.

(c) If the jury finds that the defendant is a status offender, the trial judge shall enter judgment according to the provisions of this Article. If the jury finds that the defendant is not a status offender, the trial judge shall pronounce judgment on the principal felony offense of breaking and entering as provided by law.

**"§ 14-7.31. Sentencing of status offenders.**

(a) When a status offender as defined in this Article commits a felony offense of breaking and entering under the laws of the State of North Carolina, the status offender must, upon conviction or plea of guilty under indictment as provided in this Article, be sentenced as a Class E felon.

(b) In determining the prior record level, any conviction used to establish a person's status as a status offender shall not be used. Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section.

(c) A conviction as a status offender under this Article shall not constitute commission of a felony for the purpose of either Article 2A or Article 2B of Chapter 14 of the General Statutes."

**SECTION 3.(b)** G.S. 14-7.1 reads as rewritten:

**"§ 14-7.1. Persons defined as habitual felons.**

Any person who has been convicted of or pled guilty to three felony offenses in any federal court or state court in the United States or combination thereof is declared to be an habitual felon. ~~felon and may be charged as a status offender pursuant to this Article.~~ For the purpose of this Article, a felony offense is defined as an offense which is a felony under the laws of the State or other sovereign wherein a plea of guilty was entered or a conviction was returned regardless of the sentence actually imposed. Provided, however, that federal offenses relating to the manufacture, possession, sale and kindred offenses involving intoxicating liquors shall not be considered felonies for the purposes of this Article. For the purposes of this Article, felonies committed before a person attains the age of 18 years shall not constitute more than one felony. The commission of a second felony shall not fall within the purview of this Article unless it is committed after the conviction of or plea of guilty to the first felony. The commission of a third felony shall not fall within the purview of this Article unless it is committed after the conviction of or plea of guilty to the second felony. Pleas of guilty to or convictions of felony offenses prior to July 6, 1967, shall not be felony offenses within the meaning of this Article. Any felony offense to which a pardon has been extended shall not for the purpose of this Article constitute a felony. The burden of proving such pardon shall rest with the defendant and the State shall not be required to disprove a pardon."

**SECTION 3.(c)** G.S. 14-7.3 reads as rewritten:

**"§ 14-7.3. Charge of habitual felon.**

The district attorney, in his or her discretion, may charge a person as an habitual felon pursuant to this Article. An indictment which charges a person who is an habitual felon within the meaning of G.S. 14-7.1 with the commission of any felony under the laws of the State of North Carolina must, in order to sustain a conviction of habitual felon, also charge that said person is an habitual felon. The indictment charging the defendant as an habitual felon shall be separate from the indictment charging him with the principal felony. An indictment which charges a person with being an habitual felon must set forth the date that prior felony offenses were committed, the name of the state or other sovereign against whom said felony offenses were committed, the dates that pleas of guilty were entered to or convictions returned in said felony offenses, and the identity of the court wherein said pleas or convictions took place. No defendant charged with being an habitual felon in a bill of indictment shall be required to go to trial on said charge within 20 days of the finding of a true bill by the grand jury; provided, the defendant may waive this 20-day period."

**SECTION 3.(d)** G.S. 14-7.6 reads as rewritten:

**"§ 14-7.6. Sentencing of habitual felons.**

When an habitual felon as defined in this Article commits any felony under the laws of the State of North Carolina, the felon must, upon conviction or plea of guilty under indictment as provided in this Article (except where the felon has been sentenced as a Class A, B1, or B2 felon) be sentenced ~~as a Class C felon.~~ at a felony class level that is four classes higher than the

principal felony for which the person was convicted; but under no circumstances shall an habitual felon be sentenced at a level higher than a Class C felony. In determining the prior record level, convictions used to establish a person's status as an habitual felon shall not be used. Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section."

**SECTION 3.(e)** This section becomes effective December 1, 2011, and applies to any offense that occurs on or after that date and that is the principal felony offense for a charge of either the status offenses of habitual breaking and entering or habitual felon. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

#### **PART IV. LIMIT TIME/CERTAIN VIOLATIONS OF PROBATION**

**SECTION 4.(a)** G.S. 15A-1343(b) is amended by adding a new subdivision to read:

"(3a) Not to abscond, by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer."

**SECTION 4.(b)** G.S. 15A-1344(a) reads as rewritten:

"(a) Authority to Alter or Revoke. – Except as provided in subsection (a1) or (b), probation may be reduced, terminated, continued, extended, modified, or revoked by any judge entitled to sit in the court which imposed probation and who is resident or presiding in the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where the sentence of probation was imposed, where the probationer violates probation, or where the probationer resides. Upon a finding that an offender sentenced to community punishment under Article 81B has violated one or more conditions of probation, the court's authority to modify the probation judgment includes the authority to require the offender to comply with conditions of probation that would otherwise make the sentence an intermediate punishment. The court may only revoke probation for a violation of a condition of probation under G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), except as provided in G.S. 15A-1344(d2). Imprisonment may be imposed pursuant to G.S. 15A-1344(d2) for a violation of a requirement other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a). The district attorney of the prosecutorial district as defined in G.S. 7A-60 in which probation was imposed must be given reasonable notice of any hearing to affect probation substantially."

**SECTION 4.(c)** G.S. 15A-1344 is amended by adding a new subsection to read:

"(d2) Confinement in Response to Violation. – When a defendant has violated a condition of probation other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), the court may impose a 90-day period of confinement for a defendant under supervision for a felony conviction or a period of confinement of up to 90 days for a defendant under supervision for a misdemeanor conviction. The court may not revoke probation unless the defendant has previously received a total of two periods of confinement under this subsection. A defendant may receive only two periods of confinement under this subsection. If the time remaining on the defendant's maximum imposed sentence is less than 90 days, then the term of confinement is for the remaining period of the sentence. Confinement under this section shall be credited pursuant to G.S. 15-196.1."

**SECTION 4.(d)** This section is effective December 1, 2011, and applies to probation violations occurring on or after that date.

#### **PART V. DIVERSION PROGRAM/FELONY DRUG POSSESSION**

**SECTION 5.(a)** G.S. 90-96 reads as rewritten:

**"§ 90-96. Conditional discharge for first offense.**

(a) Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal laws; (ii) any offense under this Article~~Article~~; or (iii) an offense under any statute of the United States or any state relating to those substances included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of Chapter 90~~90~~ of the General Statutes pleads guilty to or is found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules ~~H-I~~I through VI of this Article or by possessing drug paraphernalia as prohibited by G.S. 90 113.22, or (ii) a felony under G.S. 90-95(a)(3)~~G.S. 90-95(a)(3)~~ by possessing less than one gram of cocaine, the court ~~may, shall~~, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. 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. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Health and Human ~~Services~~Services or in the Treatment for Effective Community Supervision Program under Article 6B of Chapter 143B of the General Statutes. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under this Article. Discharge and dismissal under this section or G.S. 90 113.14 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge and dismiss under this section the court shall make a finding that the defendant has no record of previous convictions ~~under the "North Carolina Controlled Substances Act", Article 5, Chapter 90, the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90~~ as provided in this subsection.

(a1) Upon the first conviction only of any offense ~~included in G.S. 90-95(a)(3) or G.S. 90 113.22 and subject to the provisions of this subsection (a1), which qualifies under the provisions of subsection (a) of this section, and the provisions of this subsection~~, the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Health and Human Services pursuant to G.S. 90 96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

- (1) There is no drug education school within a reasonable distance of the defendant's residence; or
- (2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subdivision (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

Upon fulfillment of the terms and conditions of the probation, the court shall discharge such person and dismiss the proceedings against the person.

For the purposes of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or 90-113.22 shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation pursuant to this subsection and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to G.S. 15A-145.2. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the course as provided in G.S. 90-96.01(b), or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall revoke probation, shall not discharge such person, shall not dismiss the proceedings against the person, and shall deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to G.S. 15A-145.2. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the discharge of such person, and dismissal of the proceedings against the person under subsection (a) or (a1) of this section, such person, if he or she was not over 21 years of age at the time of the offense, may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(a).

(c) Repealed by Session Laws 2009-510, s. 8(b), effective October 1, 2010.

(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules ~~H-I~~ through VI of this Article or a felony under ~~G.S. 90-95(a)(3) by possessing less than one gram of cocaine, G.S. 90-95(a)(3),~~ upon dismissal by the State of the charges against such person, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, the person may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(b).

(e) Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal laws; (ii) any offense under this Article; or (iii) an offense under any statute of the United States or any state relating to ~~Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to~~ controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules ~~H-I~~ through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or (ii) a felony under ~~G.S. 90-95(a)(3) by possessing less than one gram of cocaine, G.S. 90-95(a)(3),~~ the person may be eligible to apply for cancellation of the judgment and expunction of certain records related to the offense pursuant to G.S. 15A-145.2(c).

...."

**SECTION 5.(b)** G.S. 15A-145.2 reads as rewritten:

**"§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.**

...

(b) Whenever any person is charged with a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules ~~H-I~~ through VI of Article 5 of Chapter 90 of the General Statutes or a felony under ~~G.S. 90-95(a)(3)~~ by possessing less than one gram of cocaine, ~~G.S. 90-95(a)(3)~~, upon dismissal by the State of the charges against the person, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his or her arrest, indictment or information, or trial. If the court determines, after hearing, that such person was not over 21 years of age at the time the offense for which the person was charged occurred, it shall enter such order. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

(c) Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal laws; (ii) any offense under Chapter 90 of the General Statutes; or (iii) an offense under any statute of the United States or any state relating to controlled substances included in any schedule of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes, pleads guilty to or has been found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules I through VI of Chapter 90, or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3). ~~Whenever any person who has not previously been convicted of an offense under Article 5 of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules through VI of Article 5 of Chapter 90 of the General Statutes or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or (ii) a felony under the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.~~

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the petitioner's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes for possessing a controlled substance included within Schedules ~~H-I~~ through VI of Article 5 of Chapter 90 of the General Statutes or for possessing

drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under ~~G.S. 90-95(a)(3)~~ for possession of less than one gram of cocaine, G.S. 90-95(a)(3), that the petitioner has no disqualifying previous convictions as set forth in this subsection, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status the petitioner occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order all law enforcement agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local agencies identified by the petitioner as bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150."

**SECTION 5.(c)** Article 81B of Chapter 15A of the General Statutes is amended by adding a new section to read:

**"§ 15A-1340.18. Advanced supervised release.**

(a) Definitions. – For the purposes of this section, the following definitions apply:

- (1) "Advanced supervised release" or "ASR" means release from prison and placement on post-release supervision under this section if an eligible defendant is sentenced to active time.
- (2) "Eligible defendant" means a defendant convicted and sentenced based upon any of the following felony classes and prior record levels:
  - a. Class D, Prior Record Level I-III.
  - b. Class E, Prior Record Level I-IV.
  - c. Class F, Prior Record Level I-V.
  - d. Class G, Prior Record Level I-VI.
  - e. Class H, Prior Record Level I-VI.
- (3) "Risk reduction incentive" is a sentencing condition which, upon successful completion during incarceration, results in a prisoner being placed on ASR.

(b) The Department of Correction is authorized to create risk reduction incentives consisting of treatment, education, and rehabilitative programs. The incentives shall be designed to reduce the likelihood that the prisoner who receives the incentive will reoffend.

(c) The court, in its discretion and without objection from the prosecutor, may include a risk reduction incentive or incentives in sentencing an eligible defendant to an active sentence.

(d) The court shall impose a sentence calculated pursuant to Article 81B of the General Statutes. The ASR date shall be the shortest mitigated sentence for the offense at the offender's prior record level. If the court utilizes the mitigated range in sentencing the defendant, then the ASR date shall be eighty percent (80%) of the minimum sentence imposed.

(e) The defendant shall be notified at sentencing that if the defendant completes the risk reduction incentives as identified by the Department, then he or she will be released on the

ASR date. If the Department determines that the defendant is unable to complete the incentives by the ASR date, through no fault of the defendant, then the defendant shall be released at the ASR date.

(f) Termination from the risk reduction incentive program shall result in the nullification of the ASR date, and the defendant's release date shall be calculated based upon the adjudged sentence. A prisoner who has completed the risk reduction incentives prior to the ASR date may have the ASR date nullified due to noncompliance with Department rules or regulations.

(g) A defendant released on the ASR date is subject to post-release supervision under this Article. Notwithstanding the provisions in G.S. 15A-1368.3(c), if the defendant has been returned to prison for three, three-month periods of confinement, a subsequent violation shall result in the defendant returning to prison to serve the time remaining on the maximum imposed term, and is ineligible for further post-release supervision regardless of the amount of time remaining to be served.

(h) The Department shall adopt policies and procedures for the assessment to occur at diagnostic processing, for documentation of the inmate's progress, and for termination from the incentive program due to a lack of progress or a pattern of noncompliance in the program or with other Department rules or regulations."

**SECTION 5.(d)** G.S. 15A-1340.13(d) reads as rewritten:

"(d) Service of Minimum Required; Earned Time Authorization. – An offender sentenced to an active punishment shall serve the minimum term ~~imposed~~–imposed, except as provided in G.S. 15A-1340.18. The maximum term may be reduced to, but not below, the minimum term by earned time credits awarded to an offender by the Department of Correction or the custodian of the local confinement facility, pursuant to rules adopted in accordance with law."

**SECTION 5.(e)** This section becomes effective January 1, 2012, and applies to persons entering a plea or who are found guilty of an offense on or after that date.

## **PART VI. REFOCUS CRIMINAL JUSTICE PARTNERSHIP PROGRAM**

**SECTION 6.(a)** Article 6A of Chapter 143B of the General Statutes is repealed.

**SECTION 6.(b)** Chapter 143B of the General Statutes is amended by adding a new Article to read:

"Article 6B.

"Treatment for Effective Community Supervision Program.

**"§ 143B-274.1. Short title.**

This Article is the "Treatment for Effective Community Supervision Act of 2011" and may be cited by that name.

**"§ 143B-274.2. Legislative policy.**

The policy of the General Assembly with respect to the Treatment for Effective Community Supervision Program is to support the use of evidence-based practices to reduce recidivism and to promote coordination between State and community-based corrections programs.

**"§ 143B-274.3. Definitions.**

The following definitions apply in this Article:

- (1) Certified and licensed. – North Carolina Substance Abuse Professional Practice Board certified or licensed substance abuse professionals or Department of Health and Human Services licensed agencies.
- (2) Department. – The Department of Correction.
- (3) Division. – The Department of Correction, Division of Community Corrections.



- (4) Eligible entity. – A local or regional government, a nongovernmental entity, or collaborative partnership that demonstrates capacity to provide services that address the criminogenic needs of offenders.
- (5) Program. – A community-based corrections program.
- (6) Secretary. – The Secretary of the Department of Correction.
- (7) State Board. – The State Community Corrections Advisory Board.

**"§ 143B-274.4. Goals of community-based corrections programs funded under this Article.**

The goals of community-based programs funded under this Article are to reduce recidivism and to reduce the rate of probation and post-release supervision revocations from the rate in the 2009-2010 fiscal year.

**"§ 143B-274.5. Eligible population.**

(a) An eligible offender is an adult offender who was convicted of a misdemeanor or a felony offense or is sentenced under the conditional discharge program as defined in G.S. 90-96 and meets any one of the following criteria:

- (1) Received a nonincarcerative sentence of a community punishment.
- (2) Received a nonincarcerative sentence of an intermediate punishment.
- (3) Is serving a term of parole or post-release supervision after serving an active sentence of imprisonment.

(b) The priority populations for programs funded under this Article shall be as follows:

- (1) Offenders convicted of a felony or offenders sentenced under G.S. 90-96 conditional discharge for a felony offense.
- (2) Offenders identified by the Department of Correction using a validated risk assessment instrument to have a high likelihood of reoffending and a moderate to high need for substance abuse treatment.

**"§ 143B-274.6. Duties of Department of Correction.**

(a) In addition to those otherwise provided by law, the Department of Correction shall have the following duties:

- (1) To enter into contractual agreements with eligible entities for the operation of community-based corrections programs and monitor compliance with those agreements.
- (2) To develop the minimum program standards, policies, and rules for community-based corrections programs and to consult with the Department of Health and Human Services on those standards, policies, and rules that are applicable to licensed and credentialed substance abuse services.
- (3) To monitor, oversee, and evaluate contracted service providers.
- (4) To act as an information clearinghouse regarding community-based corrections programs.
- (5) To collaborate with the Department of Health and Human Services on focusing treatment resources on high-risk and moderate to high need offenders on probation, parole, and post-release supervision.

(b) The Department of Correction, Division of Community Corrections, shall develop and publish a recidivism reduction plan for the State that accomplishes the following:

- (1) Articulates a goal of reducing revocations among people on probation and post-release supervision by twenty percent (20%) from the rate in the 2009-2010 fiscal year.
- (2) Identifies the number of people on probation and post-release supervision in each county that are in the priority population and have a likely need for substance abuse and/or mental health treatment, employment, education, and/or housing.

- (3) Identifies the program models that research has shown to be effective at reducing recidivism for the target population and ranks those programs based on their cost-effectiveness.
- (4) Propose a plan to fund the provision of the most cost-effective programs and services across the State. The plan shall describe the number and types of programs and/or services to be funded in each region of the State and how that program capacity compares with the needs of the target population in that region.

(c) The Department of Correction shall report by March 1 of each year to the Chairs of the Senate and House of Representatives Appropriations Committees, the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the status of the Treatment for Effective Community Supervision Program. The report shall include the following information:

- (1) The dollar amount and purpose of funds provided on a contractual basis to service providers for the previous fiscal year.
- (2) An analysis of offender participation data received, including the following:
  - a. The number of people on probation and post-release supervision that are in the priority population that received services.
  - b. The number of people on probation and post-release supervision that are in the priority population that did not receive services.
  - c. The number of people on probation and post-release supervision outside of the priority population that received services.
  - d. The type of services provided to these populations.
  - e. The rate of revocations and successful completions for people who received services.
  - f. Other measures as determined appropriate.
- (3) The dollar amount needed to provide additional services to meet the needs of the priority population in the upcoming budget year.
- (4) Details of personnel, travel, contractual, operating, and equipment expenditures for each program type.

**"§ 143B-274.7. Contract for services.**

(a) The Department of Correction shall contract with service providers through a competitive procurement process to provide community-based services to offenders on probation, parole, or post-release supervision.

(b) Contracts for substance abuse treatment services shall be awarded to certified or licensed substance abuse professionals and appropriately licensed agencies to provide services and use practices that have a demonstrated evidence base.

(c) The Department of Correction, in partnership with the Department of Health and Human Services, shall develop standard service definitions and performance measures for substance abuse and aftercare support services for inclusion in the contracts.

(d) The percentage of funds received by a service provider that may be used for administrative purposes is up to fifteen percent (15%).

**"§ 143B-274.8. State Community Corrections Advisory Board.**

(a) The State Board shall act as an advisory body to the Secretary with regard to this Article. The State Board shall consist of 23 members as follows, to be appointed as provided in subsection (b) of this section:

- (1) A member of the Senate.
- (2) A member of the House of Representatives.
- (3) A judge of the superior court.
- (4) A judge of the district court.

- (5) A district attorney.
  - (6) A criminal defense attorney.
  - (7) A county sheriff.
  - (8) A chief of a city police department.
  - (9) Two county commissioners, one from a predominantly urban county and one from a predominantly rural county.
  - (10) A representative of an existing community-based corrections program.
  - (11) A member of the public who has been the victim of a crime.
  - (12) Two rehabilitated ex-offenders.
  - (13) A member of the business community.
  - (14) Three members of the general public, one of whom is a person recovering from chemical dependency or who is a previous consumer of substance abuse treatment services.
  - (15) A victim service provider.
  - (16) A member selected from each of the following service areas: mental health, substance abuse, and employment and training.
  - (17) A clerk of superior court.
- (b) The membership of the State Board shall be selected as follows:
- (1) The Governor shall appoint the following members: the county sheriff, the chief of a city police department, the member of the public who has been the victim of a crime, a rehabilitated ex-offender, and the members selected from each of the service areas.
  - (2) The Lieutenant Governor shall appoint the following members: the member of the business community, one member of the general public who is a person recovering from chemical dependency or who is a previous consumer of substance abuse treatment services, and the victim service provider.
  - (3) The Chief Justice of the North Carolina Supreme Court shall appoint the following members: the superior court judge, the district court judge, the district attorney, the clerk of superior court, the criminal defense attorney, and the representative of an existing community-based corrections program.
  - (4) The President Pro Tempore of the Senate shall appoint the following members: the member of the Senate, the county commissioner from a predominantly urban county, and one member of the general public.
  - (5) The Speaker of the House of Representatives shall appoint the following members: the member of the House of Representatives, the county commissioner from a predominantly rural county, and one member of the general public.

In appointing the members of the State Board, the appointing authorities shall make every effort to ensure fair geographic representation of the State Board membership and to ensure that minority persons and women are fairly represented.

(c) The initial members shall serve staggered terms; one-third shall be appointed for a term of one year, one-third shall be appointed for a term of two years, and one-third shall be appointed for a term of three years. The members identified in subdivisions (1) through (7) of subsection (a) of this section shall be appointed initially for a term of one year. The members identified in subdivisions (8) through (13) in subsection (a) of this section shall be appointed initially for a term of two years. The members identified in subdivisions (14) through (16) of subsection (a) of this section shall each be appointed for a term of three years. The additional member identified in subdivision (17) in subsection (a) of this section shall be appointed initially for a term of three years.

At the end of their respective terms of office their successors shall be appointed for terms of three years. A vacancy occurring before the expiration of the term of office shall be filled in the

same manner as original appointments for the remainder of the term. Members may be reappointed without limitation.

(d) Each appointing authority shall have the power to remove a member it appointed from the State Board for misfeasance, malfeasance, or nonfeasance.

(e) The members of the State Board shall, within 30 days after the last initial appointment is made, meet and elect one member as Chair and one member as Vice-Chair.

(f) The State Board shall meet at least quarterly and may also hold special meetings at the call of the Chair. For purposes of transacting business, a majority of the membership shall constitute a quorum.

(g) Any member who has an interest in a governmental agency or unit or private nonprofit agency which is applying for a Treatment for Effective Community Supervision Program contract or which has received a contract and which is the subject of an inquiry or vote by a contract oversight committee, shall publicly disclose that interest on the record and shall take no part in discussion or have any vote in regard to any matter directly affecting that particular grant applicant or grantee. "Interest" in a grant applicant or grantee means a formal and direct connection to the entity, including, but not limited to, employment, partnership, serving as an elected official, board member, director, officer, or trustee, or being an immediate family member of someone who has such a connection to the grant applicant or grantee.

(h) The members of the State Board shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses.

**"§ 143B-274.9. State Community Corrections Advisory Board; powers and duties.**

(a) The State Community Corrections Advisory Board, as defined under this Article, has the following duties and responsibilities:

- (1) To review the criteria for monitoring and evaluating community-based corrections programs.
- (2) To recommend community-based corrections program priorities.
- (3) To review the minimum program standards, policies, and rules for community-based corrections programs.
- (4) To review the evaluation of programs funded by this Article.

**"§ 143B-274.10. North Carolina Sentencing and Policy Advisory Commission report.**

The North Carolina Sentencing and Policy Advisory Commission shall report by April 30 of each even-numbered year to the General Assembly and the Governor on recidivism rates for offenders on probation, parole, and post-release supervision participating in programming funded through this Article according to risk level.

**"§ 143B-274.11. Program types eligible for funding; community-based corrections programs.**

Based on the prioritized populations in G.S. 143B-274.5(b), program types eligible for funding may include, but are not limited to, the following:

- (1) Substance abuse treatment services, to include co-occurring substance abuse and mental health disorder services, residential, intensive outpatient, outpatient, peer support, and relapse prevention.
- (2) Cognitive behavioral programming and other evidence-based programming deemed to be the most cost-effective method to reduce criminogenic needs identified by the risk/needs assessment."

**SECTION 6.(c)** This section becomes effective July 1, 2011. The Department of Correction may enter into contracts under this section with current program providers in the Criminal Justice Partnership Program on a sole-source basis during the 2011-2012 fiscal year.

**PART VII. MOST MISDEMEANANTS TO SERVE SENTENCES IN JAIL**

**SECTION 7.(a)** G.S. 148-32.1 is amended by adding a new subsection to read:

"(b1) It is the intent of the General Assembly to authorize the Department of Correction to enter into voluntary agreements with counties to provide housing for misdemeanants serving periods of confinement of more than 90 days and up to 180 days, except for those serving a sentence for an impaired driving offense. It is further the intent of the General Assembly that the Department of Correction, in conjunction with the North Carolina Sheriffs' Association, Inc., establish a program for housing misdemeanants serving periods of confinement of more than 90 days and up to 180 days, except for those serving sentences for an impaired driving offense. It is also the intent of the General Assembly that the Department of Correction contract with the North Carolina Sheriffs' Association, Inc., to provide a service that identifies space in local confinement facilities that is available for housing these misdemeanants.

The General Assembly intends that the cost of housing and caring for these misdemeanants, including, but not limited to, care, supervision, transportation, medical, and any other related costs, be covered by State funds and not be imposed as a local cost. Therefore, the General Assembly intends that the funds in the Statewide Misdemeanant Confinement Fund established in G.S. 148-10.4 be used to provide funding to cover the costs of managing a system for providing that housing of misdemeanants in local confinement facilities as well as reimbursing the counties for housing and related expenses for those misdemeanants."

**SECTION 7.(b)** G.S. 15A-1352 reads as rewritten:

**"§ 15A-1352. Commitment to Department of Correction or local confinement facility.**

(a) A person sentenced to imprisonment for a misdemeanor under this Article or for nonpayment of a fine under Article 84 of this Chapter shall be committed for the term designated by the court to the custody of the Department of Correction or to a local confinement facility. If the sentence imposed for a misdemeanor is for a period of 90 days or less, the commitment must be to a facility other than one maintained by the Department of Correction, except as provided in G.S. 148-32.1(b). If the sentence or sentences imposed require confinement for more than 180 days, the commitment must be to the custody of the Department of Correction.

If a person is sentenced to imprisonment for a misdemeanor under this Article or for nonpayment of a fine under Article 84 of this Chapter, the sentencing judge shall make a finding of fact as to whether the person would be suitable for placement in a county satellite jail/work release unit operated pursuant to G.S. 153A-230.3. If the sentencing judge makes a finding of fact that the person would be suitable for placement in a county satellite jail/work release unit and the person meets the requirements listed in G.S. 153A-230.3(a)(1), then the custodian of the local confinement facility may transfer the misdemeanant to a county satellite jail/work release unit.

(b) A person sentenced to imprisonment for a felony under this Article shall be committed for the term designated by the court to the custody of the Department of ~~Correction~~; ~~except that, upon request of the sheriff or the board of commissioners of a county, the presiding judge may, in his discretion, sentence the person to a local confinement facility in that county.~~ Correction.

(c) A person sentenced to imprisonment for nonpayment of a fine under Article 84, Fines, shall be committed for the term designated by the court:

- (1) To the custody of the Department of Correction if the person was fined for conviction of a felony;
- (2) To the custody of the Department of Correction or to a local confinement facility if the person was fined for conviction of a misdemeanor, provided that (i) if the sentence imposed is for a period of 90 days or less, the commitment shall be to a facility other than one maintained by the Department of Correction, except as provided in ~~G.S. 148-32.1(b).~~ G.S. 148-32.1(b) and (ii) if the sentence or sentences imposed require

confinement for more than 180 days, the commitment must be to the custody of the Department of Correction.

... "

**SECTION 7.(c)** G.S. 15A-1352 is amended by adding a new subsection to read:

"(e) A person sentenced for a misdemeanor who has a sentence imposed that requires confinement for a period of more than 90 days and up to 180 days, except for those serving sentences for an impaired driving offense under G.S. 20-138.1 under this Article or for nonpayment of a fine under Article 84 of this Chapter, shall be committed for the term designated by the court to confinement pursuant to the Statewide Misdemeanant Confinement Program established by G.S. 148-32.1."

**SECTION 7.(d)** G.S. 148-32.1(b) reads as rewritten:

"(b) In the event that the custodian of the local confinement facility certifies in writing to the clerk of the superior court in the county in which ~~said~~the local confinement facility is located that the local confinement facility is filled to capacity, or that the facility cannot reasonably accommodate any more prisoners due to segregation requirements for particular prisoners, or that the custodian anticipates, in light of local experiences, an influx of temporary prisoners at that time, or if the local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221, any judge of the district court in the district court district as defined in G.S. 7A-133 where the facility is located, or any superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or G.S. 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the facility is located may order that ~~the~~ a prisoner not housed pursuant to the Statewide Misdemeanant Confinement Program established in subsection (b2) of this section be transferred to any other qualified local confinement facility within that district or within another such district where space is available, including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the prisoner is a non-violent misdemeanor, which local facility shall accept the transferred prisoner, ~~if the prison population has exceeded a manageable level as provided for in G.S. 148-4.1(a). If no such local confinement facility is available, then any such judge may order the prisoner transferred to such camp or facility as the proper authorities of the Department of Correction shall designate, notwithstanding that the term of imprisonment of the prisoner is 90 days or less. In no event, however, shall a prisoner whose term of imprisonment is less than 30 days be assigned or ordered transferred to any such camp or facility.~~ prisoner.

If no other local confinement facility is available and the reason for the requested transfer is that the local confinement facility that would be required to house the prisoner cannot reasonably accommodate any more prisoners due to segregation requirements for particular prisoners or the local facility does not meet the minimum standards published pursuant to G.S. 153A-221, then the judge may order that a prisoner not housed pursuant to the Statewide Misdemeanant Confinement Program established in subsection (b2) of this section be transferred to a facility operated by the Department of Correction as designated by the Department of Correction. In no event, however, shall a prisoner whose term of imprisonment is less than 30 days be assigned or ordered transferred to a facility operated by the Department of Correction."

**SECTION 7.(e)** G.S. 148-32.1 is amended by adding a new subsection to read:

"(b2) The Statewide Misdemeanant Confinement Program is established. The Program shall provide for the housing of misdemeanants from all counties serving sentences imposed for a period of more than 90 days and up to 180 days, except for those serving sentences for an impaired driving offense under G.S. 20-138.1. Those misdemeanants shall be confined in local confinement facilities except as provided in subsections (b3) and (b4) of this section. The Program shall address methods for the placement and transportation of inmates and reimbursement to counties for the housing of those inmates. Any county that voluntarily agrees

to house misdemeanants from that county or from other counties pursuant to the Program may enter into a written agreement with the Department of Correction to do so.

This Program shall only operate as long as sufficient State funds are available through the Statewide Misdemeanant Confinement Fund established in G.S. 148-10.4(c). "

**SECTION 7.(f)** The North Carolina Sheriffs' Association, Inc., in consultation with the Department of Correction, shall develop the Statewide Misdemeanant Confinement Program established in G.S. 148-32.1, as enacted in subsection (e) of this section, by September 1, 2011.

Notwithstanding any other provision of law, no later than November 1, 2011, the Secretary of Correction shall contract with the North Carolina Sheriffs' Association, Inc., to implement the Program. The contract terms shall include all of the following:

- (1) A provision that the Program shall be operated on a statewide basis no later than January 1, 2012, but may be phased in beginning at an earlier date.
- (2) A provision addressing the method of payment to the North Carolina Sheriffs' Association, Inc., for the costs of administering the Program.
- (3) A provision authorizing reimbursement by the North Carolina Sheriffs' Association, Inc., to counties or to the Department of Correction, as appropriate, for all expenses incurred on behalf of those misdemeanants.

**SECTION 7.(g)** G.S. 148-32.1 is amended by adding new subsections to read:

"(b3) The custodian of a local confinement facility may request a judicial order to transfer a misdemeanant housed pursuant to the Statewide Misdemeanant Confinement Program to a facility operated by the Department of Correction by certifying in writing to the clerk of the superior court in the county in which the local confinement facility is located that:

- (1) The misdemeanant poses a security risk because the misdemeanant:
  - a. Poses a serious escape risk;
  - b. Exhibits violently aggressive behavior that cannot be contained and warrants a higher level of supervision;
  - c. Needs to be protected from other inmates, and the county jail facility cannot provide such protection;
  - d. Is a female or a person 18 years of age or younger, and the county jail facility does not have adequate housing for such prisoners;
  - e. Is in custody at a time when a fire or other catastrophic event has caused the county jail facility to cease or curtail operations; or
  - f. Otherwise poses an imminent danger to the staff of the county jail facility or to other prisoners in the facility.
- (2) The misdemeanant requires medical or mental health treatment that the county decides can best be provided by the Department of Correction.
- (3) The local confinement facility that would be required to house the prisoner (i) cannot reasonably accommodate any more prisoners due to segregation requirements for particular prisoners, or the local facility does not meet the minimum standards published pursuant to G.S. 153A-221, and (ii) no other local confinement facility is available.

Upon receiving such request and certification in writing, any superior or district court judge for the district in which the local confinement facility is located may, after ascertaining that the request meets the criteria set forth in subdivision (1), (2), or (3) of this subsection, order the misdemeanant transferred to a unit of the State prison system designated by the Secretary of Correction or the Secretary's authorized representative. The Department of Correction shall be reimbursed from the Statewide Misdemeanant Confinement Fund for the costs of housing the misdemeanant, including the care, supervision, and transportation of the misdemeanant.

(b4) A misdemeanant housed under the Statewide Misdemeanant Confinement Program established pursuant to subsection (b2) of this section may be transferred to a facility operated

by the Department of Correction if the North Carolina Sheriffs' Association, Inc., determines that the local confinement facilities available for housing misdemeanants under the Program are filled to capacity. The Department of Correction shall be reimbursed from the Statewide Misdemeanant Confinement Fund for the costs of housing the misdemeanant, including the care, supervision, and transportation of the misdemeanant."

**SECTION 7.(h)** Article 1 of Chapter 148 of the General Statutes is amended by adding a new section to read:

**"§ 148-10.4. Statewide Misdemeanant Confinement Fund.**

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

(1) Department. – Department of Correction.

(2) Fund. – The Statewide Misdemeanant Confinement Fund established by this section.

(3) Program. – Statewide Misdemeanant Confinement Program established under G.S. 148-32.1(b3).

(4) Sheriffs' Association. – North Carolina Sheriffs' Association, Inc.

(b) Intent and Purpose. – It is the intent of the General Assembly that the funds in the Fund established by this section be used to reimburse local governments for expenses incurred for housing misdemeanants under the Program, and other related expenses; and to cover administrative costs incurred by the Sheriffs' Association for services provided by it regarding the housing of these misdemeanants.

(c) Statewide Misdemeanant Confinement Fund established. – There is created within the Department of Correction a special nonreverting fund called the Statewide Misdemeanant Confinement Fund.

(d) Fund Uses. – Moneys in the Fund may be used for the following:

(1) Reimbursements by the Sheriffs' Association to counties for the costs of housing misdemeanants under the Program, including the care, supervision, and transportation of those misdemeanants.

(2) Reimbursements to the Department of Correction for the cost of housing misdemeanants transferred to the Department pursuant to G.S. 148-32.1(b3), including the care, supervision, and transportation of those misdemeanants.

(3) To pay the Sheriffs' Association for administrative and operating expenses pursuant to subsection (e) of this section.

(4) To pay the Department of Correction for administrative and operating expenses pursuant to subsection (e) of this section.

(e) Operating and Administrative Expenses. – Ten percent (10%) of the monthly receipts collected and credited to the Statewide Misdemeanant Confinement Fund shall be transferred on a monthly basis to the Sheriffs' Association to be used to support the Program and for administrative and operating expenses of the Association and its staff. One percent (1%) of the monthly receipts collected and credited to the Statewide Misdemeanant Confinement Fund shall be transferred on a monthly basis to the General Fund to be allocated to the Department of Correction for its administrative and operating expenses for the Program."

**SECTION 7.(i)** The North Carolina Sheriffs' Association, Inc., shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by October 1, 2011, on the implementation of this Part, and shall report thereafter as requested by the Committee. The report shall include relevant information collected monthly by the North Carolina Sheriffs' Association, Inc., regarding the jail capacity and population in each county.

**SECTION 7.(j)** The General Assembly finds that while the Program developed pursuant to G.S. 148-32.1(b2), as enacted by subsection (e) of this section, shall be available statewide on January 1, 2012, it may be available to some counties at an earlier date. Therefore, notwithstanding any other provision of law, a misdemeanant, who has a sentence imposed of more than 90 days and up to 180 days prior to January 1, 2012, excluding those



serving sentences for an impaired driving offense under G.S. 20-138.1, may be transferred or reassigned to a local confinement facility designated by the North Carolina Sheriffs' Association, Inc., as provided by the Program developed pursuant to G.S. 148-32.1(b2).

**SECTION 7.(k)** Of the funds appropriated to the Department of Correction for the 2011-2012 fiscal year, the Department shall transfer the sum of three hundred thousand dollars (\$300,000) to the North Carolina Sheriffs' Association, Inc., for expenses related to initiating the provisions of this Part.

**SECTION 7.(l)** If there is not adequate capacity in the Statewide Misdemeanant Confinement program, such that the Department of Correction must continue to house prisoners serving more than 90 days and up to 180 days pursuant to G.S. 148-32.1(b4), then the Department of Correction is authorized to use funds received from the Statewide Misdemeanant Confinement Fund to operate facilities previously identified for closure and for diagnostic staff positions.

**SECTION 7.(m)** If House Bill 200, 2011 Regular Session, becomes law, then that act is amended by deleting subsection (a) of Section 31.26 of that act.

**SECTION 7.(n)** If House Bill 200, 2011 Regular Session, becomes law, then section 31.26 of that act is amended by adding a new subsection to read:

"**SECTION 31.26.(g)** This section becomes effective August 1, 2011."

**SECTION 7.(o)** If House Bill 200, 2011 Regular Session, becomes law, then that act is amended by adding a new section to read:

"**SECTION 31.23B.** G.S. 15A-932 is amended by adding a new subsection to read:

'(d1) If the proceeding was dismissed pursuant to subdivision (2) of subsection (a) of this section and charged only offenses for which written appearance, waiver of trial or hearing, and plea of guilty or admission of responsibility are permitted pursuant to G.S. 7A-148(a), and the defendant later tenders to the court that waiver and payment in full of all applicable fines, costs, and fees, the clerk shall accept said waiver and payment without need for a written reinstatement from the prosecutor. Upon disposition of the case pursuant to this subsection, the clerk shall recall any outstanding criminal process in the case pursuant to G.S. 15A-301(g)(2)b.'"

**SECTION 7.(p)** If House Bill 200, 2011 Regular Session, becomes law, then Section 31.26 of that act is amended by adding a new subsection to read:

"**SECTION 31.26.(f1)** G.S. 7A-321(d) is amended by adding a new subdivision to read:

'(d) The court shall retain a collection assistance fee in the amount of ten percent (10%) of any cost or fee collected by the Department pursuant to this Article or Chapter 20 of the General Statutes and remitted to an agency of the State or any of its political subdivisions, other than a cost or fee listed in this subsection. The court shall remit the collection assistance fee to the State Treasurer for the support of the General Court of Justice.

The collection assistance fee shall not be retained from the following:

...  
(3) Costs and fees designated by law for remission to the Statewide Misdemeanant Confinement Fund."

**SECTION 7.(q)** G.S. 148-32.1(b2), as enacted by subsection (e) of this section, and subsections (a), (h), (i), (j), (k), (l), (m), (n), (o), (p), and (q) of this section become effective July 1, 2011. The remainder of this section becomes effective January 1, 2012, and applies to sentences imposed on or after that date.

## **PART VIII. ANNUAL REPORT AND SENTENCING COMMISSION DUTIES**

**SECTION 8.(a)** Article 4 of Chapter 164 of the General Statutes is amended by adding a new section to read:

**"§ 164-50. Annual report on implementation of Justice Reinvestment Project.**

The Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, and the Department of Correction shall jointly conduct ongoing evaluations regarding the implementation of the Justice Reinvestment Act of 2011. The Commission shall present the first evaluation report to the Joint Legislative Correction, Crime Control, and Juvenile Justice Oversight Committee and to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 15, 2012, and future reports shall be made annually by April 15 of each year."

**SECTION 8.(b)** G.S. 164-44(a) reads as rewritten:

"(a) The Commission shall have the secondary duty of collecting, developing, and maintaining statistical data relating to sentencing, corrections, and juvenile justice so that the primary duties of the Commission will be formulated using data that is valid, accurate, and relevant to this State. All State agencies shall provide data as it is requested by the Commission. For the purposes of G.S. 114-19.1, the Commission shall be considered to be engaged in the administration of criminal justice. All meetings of the Commission shall be open to the public and the information presented to the Commission shall be available to any State agency or member of the General Assembly."

#### **PART IX. TITLE**

**SECTION 9.** This act shall be known as "The Justice Reinvestment Act of 2011."

**PART X. EFFECTIVE DATE**

**SECTION 10.** Except as otherwise provided in this act, this act is effective when it becomes law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

In the General Assembly read three times and ratified this the 16<sup>th</sup> day of June, 2011.

s/ Walter H. Dalton  
President of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

s/ Beverly E. Perdue  
Governor

Approved 10:40 a.m. this 23<sup>rd</sup> day of June, 2011