

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 642  
Committee Substitute Favorable 4/14/11

Short Title: Justice Reinvestment Act.

(Public)

Sponsors:

Referred to:

April 6, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO IMPLEMENT CERTAIN RECOMMENDATIONS OF THE JUSTICE  
3 REINVESTMENT PROJECT AND TO PROVIDE THAT THE ACT SHALL BE  
4 ENTITLED "THE JUSTICE REINVESTMENT ACT OF 2011."

5 The General Assembly of North Carolina enacts:

6  
7 **PART I. STRENGTHEN PROBATION SUPERVISION**

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

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

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

15 "(6) Intermediate punishment. – A sentence in a criminal case that places an  
16 offender on supervised probation. ~~probation and includes at least one~~It may  
17 include drug treatment court, in addition to one or more of the following  
18 ~~conditions:~~conditions set forth in G.S. 15A-1343(a1).  
19 a. ~~Special probation as defined in G.S. 15A-1351(a).~~  
20 b. ~~Assignment to a residential program.~~  
21 c. ~~House arrest with electronic monitoring.~~  
22 d. ~~Intensive supervision.~~  
23 e. ~~Assignment to a day-reporting center.~~  
24 f. ~~Assignment to a drug treatment court program."~~

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

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

- 29 (1) House arrest with electronic monitoring.  
30 (2) Special probation as defined in G.S. 15A-1351(a).  
31 (3) Perform community service.  
32 (4) Submission to a period or periods of confinement in a local confinement  
33 facility for a total of no more than six days per month.  
34 (5) Substance abuse assessment, monitoring, or treatment.  
35 (6) Participation in an educational or vocational skills development program,  
36 including an evidence-based program.



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

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

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

- 9           (1) Perform up to 20 hours of community service, and pay the fee prescribed by  
10           law for this ~~supervision~~supervision.  
11           (2) Report to the offender's probation officer on a frequency to be determined by  
12           the ~~officer~~officer.  
13           (3) Submit to substance abuse assessment, monitoring or treatment.  
14           (4) Submit to house arrest with electronic monitoring.  
15           (5) Submit to a period or periods of confinement in a local confinement facility  
16           for a total of no more than six days per month.  
17           (6) Submit to a curfew which requires the offender to remain in a specified  
18           place for a specified period each day and wear a device that permits the  
19           offender's compliance with the condition to be monitored electronically.  
20           (7) Participate in an educational or vocational skills development program,  
21           including an evidence-based program.

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

24           The probation officer may exercise authority delegated to him or her by the court pursuant  
25 to subsection (e) of this section after administrative review and approval by a Chief Probation  
26 Officer. The offender may file a motion with the court to review the action taken by the  
27 probation officer. The offender shall be given notice of the right to seek such a court review.  
28 However, the offender shall have no right of review if he or she has signed a written waiver of  
29 rights as required by this subsection. The Division may exercise any authority delegated to it  
30 under this subsection only if it first determines that the offender has failed to comply with one  
31 or more of the conditions of probation imposed by the court or the offender is determined to be  
32 high risk based on the results of the risk assessment in G.S. 15A-1343.2. Nothing in this section  
33 shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345.

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

40           The Department shall adopt guidelines and procedures to implement the requirements of  
41 this section, which shall include a supervisor's approval prior to exercise of the delegation of  
42 authority authorized by this section. Prior to imposing confinement pursuant to subdivision (5)  
43 of this subsection, the probationer must first be presented with a violation report, with the  
44 alleged violations noted and advised of the right (i) to a hearing before the court on the alleged  
45 violation, with the right to present relevant oral and written evidence; (ii) to counsel, and that  
46 one will be appointed if the probationer is indigent; (iii) to request witnesses who have relevant  
47 information concerning the alleged violations; and (iv) to examine any witnesses or evidence.  
48 Upon the signing of a waiver of rights by the probationer, with both the probation officer and a  
49 supervisor signing as witnesses, the probationer may be confined for the period designated on  
50 the violation report."

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

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

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

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

24 The probation officer may exercise authority delegated to him or her by the court pursuant  
25 to subsection (f) of this section after administrative review and approval by a Chief Probation  
26 Officer. The offender may file a motion with the court to review the action taken by the  
27 probation officer. The offender shall be given notice of the right to seek such a court review.  
28 However, the offender shall have no right of review if he or she has signed a written waiver of  
29 rights as required by this subsection. The Division may exercise any authority delegated to it  
30 under this subsection only if it first determines that the offender has failed to comply with one  
31 or more of the conditions of probation imposed by the court or the offender is determined to be  
32 high risk based on the results of the risk assessment in G.S. 15A-1343.2. Nothing in this section  
33 shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345.

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

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

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

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

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

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

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

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

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

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

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

## 22 23 **PART II. POST RELEASE SUPERVISION CHANGES**

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

### 25 **"§ 15A-1368.1. Applicability of Article 84A.**

26       This Article applies to all felons ~~in Class B1 through Class E~~ sentenced to an active  
27 punishment under Article 81B of this Chapter, but does not apply to felons in Class A and  
28 Class B1 sentenced to life imprisonment without parole. Prisoners subject to Articles 85 and  
29 85A of this Chapter are excluded from this Article's coverage."

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

### 31 **"§ 15A-1368.2. Post-release supervision eligibility and procedure.**

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

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

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

47       (c1) Notwithstanding subsection (c) of this section, a person required to submit to  
48 satellite-based monitoring pursuant to G.S. 15A-1368.4(b1)(6) shall continue to participate in  
49 satellite-based monitoring beyond the period of post-release supervision until the Commission  
50 releases the person from that requirement pursuant to G.S. 14-208.43.

(d) A supervisee's period of post-release supervision may be reduced while the supervisee is under supervision by earned time awarded by the Department of Correction, pursuant to rules adopted in accordance with law. A supervisee is eligible to receive earned time credit toward the period of supervision for compliance with reintegrative conditions described in G.S. 15A-1368.5.

(e) Repealed by Session Laws 1997-237, s. 7.

(f) When a supervisee completes the period of post-release supervision, the sentence or sentences from which the supervisee was placed on post-release supervision are terminated."

**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 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>
11-14	12-15	13-16	14-17	15-18	16-20	17-21	18-22
19-23	20-24	21-26	22-27	23-28	24-29	25-30	26-32
27-33	28-34	29-35	30-36	31-38	32-39	33-40	34-41
35-42	36-44	37-45	38-46	39-47	40-48	41-50	42-51
43-52	44-53	45-54	46-56	47-57	48-58	49-59	

1	<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>
2	<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>
3	<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>
4	<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>
5	<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>
6	<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.

15	<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>
16	<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>
17	<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>
18	<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>
19	<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>
20	<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>
21	<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>
22	<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>
23	<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>
24	<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>
25	<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>
26	<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>
27	<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>
28	<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>
29	<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>
30	<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>
31	<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>
32	<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>
33	<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>
34	<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>
35	<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>
36	<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>
37	<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>
38	<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>
39	<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>
40	<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>
41	<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>
42	<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>
43	<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>
44	<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>
45	<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>
46	<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>
47	<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>
48	<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>
49	<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>
50	<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>
51	<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>

1	<u>311-383</u>	<u>312-384</u>	<u>313-385</u>	<u>314-386</u>	<u>315-387</u>	<u>316-389</u>	<u>317-390</u>	<u>318-391</u>
2	<u>319-392</u>	<u>320-393</u>	<u>321-395</u>	<u>322-396</u>	<u>323-397</u>	<u>324-398</u>	<u>325-399</u>	<u>326-401</u>
3	<u>327-402</u>	<u>328-403</u>	<u>329-404</u>	<u>330-405</u>	<u>331-407</u>	<u>332-408</u>	<u>333-409</u>	<u>334-410</u>
4	<u>335-411</u>	<u>336-413</u>	<u>337-414</u>	<u>338-415</u>	<u>339-416</u>			
5	<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>
6	<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>
7	<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>
8	<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>
9	<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>
10	<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>
11	<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>
12	<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>
13	<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>
14	<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>
15	<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>
16	<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>
17	<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>
18	<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>
19	<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>
20	<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>
21	<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>
22	<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>
23	<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>
24	<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>
25	<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>
26	<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>
27	<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>
28	<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>
29	<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>
30	<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>
31	<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>
32	<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>
33	<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>
34	<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>
35	<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>
36	<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>
37	<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>
38	<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>
39	<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>
40	<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>
41	<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>
42	<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>
43	<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>
44	<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>
45	<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

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

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

5  
6 **PART III. STATUS OFFENSE OF HABITUAL BREAKING AND ENTERING**

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

9 "Article 2D.

10 "Habitual Breaking and Entering Status Offense.

11 **"§ 14-7.25. Definitions.**

12 The following definitions apply in this Article:

13 (1) "Breaking and entering." – The term means any of the following felony  
14 offenses:

15 a. First degree burglary (G.S. 14-51).

16 b. Second degree burglary (G.S. 14-51).

17 c. Breaking out of dwelling house burglary (G.S. 14-53).

18 d. Breaking or entering buildings generally (G.S. 14-54(a)).

19 e. Breaking or entering a building that is a place of religious worship  
20 (G.S. 14-54.1).

21 f. Any repealed or superseded offense substantially equivalent to any of  
22 the offenses in sub-subdivision a., b., c., d., or e. of this subdivision.

23 g. Any offense committed in another jurisdiction substantially similar to  
24 any of the offenses in sub-subdivision a., b., c., d., or e. of this  
25 subdivision.

26 (2) "Convicted." – The person has been adjudged guilty of or has entered a plea  
27 of guilty or no contest to the offense of breaking and entering.

28 (3) "Status offender." – A person who is a habitual breaking and entering status  
29 offender as described in G.S. 14-7.26.

30 **"§ 14-7.26. Habitual breaking and entering status offender.**

31 Any person who is 18 years of age or older at the time the person commits a breaking and  
32 entering offense, and who has been convicted of or pled guilty to one or more prior felony  
33 offenses of breaking and entering in any federal court or state court in the United States or  
34 combination thereof, is guilty of the status offense of habitual breaking and entering and is  
35 declared to be a habitual breaking and entering status offender. This Article does not apply to a  
36 second felony offense of breaking and entering unless it is committed after the conviction of  
37 the first felony offense of breaking or entering. Any felony to which a pardon has been  
38 extended shall not, for the purposes of this Article, constitute a felony offense of breaking and  
39 entering.

40 **"§ 14-7.27. Punishment.**

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

44 **"§ 14-7.28. Charge of habitual breaking and entering status offender.**

45 (a) To sustain a conviction of a person as a status offender, the person must be charged  
46 separately for the felony offense of breaking and entering and for the habitual breaking and  
47 entering status offense. The indictment charging the defendant as a status offender shall be  
48 separate from the indictment charging the person with the principal felony offense of breaking  
49 and entering.

50 (b) An indictment that charges a person with being a status offender must set forth the  
51 date that the prior felony offense of breaking and entering was committed, the name of the state



1 or other sovereign against whom the felony offense of breaking and entering was committed,  
2 the dates that the plea of guilty was entered into or conviction returned in the felony offense of  
3 breaking and entering, and the identity of the court in which the plea or conviction took place.  
4 No defendant charged with being a status offender in a bill of indictment shall be required to go  
5 to trial on the charge within 20 days of the finding of a true bill by the grand jury; provided, the  
6 defendant may waive this 20-day period.

7 **"§ 14-7.29. Evidence of prior convictions of breaking and entering.**

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

17 **"§ 14-7.30. Verdict and judgment.**

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

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

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

32 **"§ 14-7.31. Sentencing of status offenders.**

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

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

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

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

45 **"§ 14-7.6. Sentencing of habitual felons.**

46 When an habitual felon as defined in this Article commits any felony under the laws of the  
47 State of North Carolina, the felon must, upon conviction or plea of guilty under indictment as  
48 provided in this Article (except where the felon has been sentenced as a Class A, B1, or B2  
49 felon) be sentenced as a Class C felon, at a felony class level that is four classes higher than the  
50 principal felony for which the person was convicted; but under no circumstances shall an  
51 habitual felon be sentenced at a level higher than a Class C felony. In determining the prior

1 record level, convictions used to establish a person's status as an habitual felon shall not be  
2 used. Sentences imposed under this Article shall run consecutively with and shall commence at  
3 the expiration of any sentence being served by the person sentenced under this section."

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

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

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

13 "(3a) Not to abscond, by willfully avoiding supervision or by willfully making the  
14 defendant's whereabouts unknown to the supervising probation officer."

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

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

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

32 "(d2) Confinement in Response to Violation. – When a defendant has violated a condition  
33 of probation other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), the court may impose a  
34 90-day period of confinement, but may not revoke probation. If the time remaining on the  
35 defendant's maximum imposed sentence is less than 90 days, then the term of confinement is  
36 for the remaining period of the sentence. Confinement under this section shall be credited  
37 pursuant to G.S. 15-196.1."

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

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

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

42 **§ 90-96. Conditional discharge for first offense.**

43 (a) Whenever any person who has not previously been convicted of any felony offense  
44 under this Article or under any statute of the United States or any state relating to those  
45 substances included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article  
46 5B of Chapter 90 pleads guilty to or is found guilty of (i) a misdemeanor under this Article by  
47 possessing a controlled substance included within Schedules ~~H-I~~ through VI of this Article or  
48 by possessing drug paraphernalia as prohibited by G.S. 90 113.22, or (ii) a felony under  
49 G.S. 90-95(a)(3), ~~G.S. 90-95(a)(3)~~ by possessing less than one gram of cocaine, the court may,  
50  
51

1 shall, without entering a judgment of guilt and with the consent of such person, defer further  
2 proceedings and place him on probation upon such reasonable terms and conditions as it may  
3 require. Notwithstanding the provisions of G.S. 15A 1342(c) or any other statute or law,  
4 probation may be imposed under this section for an offense under this Article for which the  
5 prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the  
6 court may allow the defendant to participate in a drug education program approved for this  
7 purpose by the Department of Health and Human ~~Services~~. Services or in the Treatment for  
8 Effective Community Supervision Program under Article 6B of Chapter 143B of the General  
9 Statutes. Upon violation of a term or condition, the court may enter an adjudication of guilt and  
10 proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall  
11 discharge such person and dismiss the proceedings against him. Discharge and dismissal under  
12 this section shall be without court adjudication of guilt and shall not be deemed a conviction for  
13 purposes of this section or for purposes of disqualifications or disabilities imposed by law upon  
14 conviction of a crime including the additional penalties imposed for second or subsequent  
15 convictions under this Article. Discharge and dismissal under this section or G.S. 90 113.14  
16 may occur only once with respect to any person. Disposition of a case to determine discharge  
17 and dismissal under this section at the district court division of the General Court of Justice  
18 shall be final for the purpose of appeal. Prior to taking any action to discharge and dismiss  
19 under this section the court shall make a finding that the defendant has no record of previous  
20 convictions under the "North Carolina Controlled Substances Act", Article 5, Chapter 90, the  
21 "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, or the "Drug Paraphernalia Act",  
22 Article 5B, Chapter 90.

23 ...

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

30 (e) Whenever any person who has not previously been convicted of an offense under  
31 this Article or under any statute of the United States or any state relating to controlled  
32 substances included in any schedule of this Article or to that paraphernalia included in Article  
33 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of (i) a  
34 misdemeanor under this Article by possessing a controlled substance included within Schedules  
35 ~~H-I~~ through VI of this Article, or by possessing drug paraphernalia as prohibited by  
36 G.S. 90-113.22 or (ii) a felony under ~~G.S. 90-95(a)(3) by possessing less than one gram of~~  
37 ~~cocaine, G.S. 90-95(a)(3),~~ the person may be eligible to apply for cancellation of the judgment  
38 and expunction of certain records related to the offense pursuant to G.S. 15A-145.2(c).

39 ...."

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

41 "**§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the**  
42 **time of the offense of certain drug offenses.**

43 ...

44 (b) Whenever any person is charged with a misdemeanor under Article 5 of Chapter 90  
45 of the General Statutes by possessing a controlled substance included within Schedules ~~H-I~~  
46 through VI of Article 5 of Chapter 90 of the General Statutes or a felony under  
47 ~~G.S. 90-95(a)(3) by possessing less than one gram of cocaine, G.S. 90-95(a)(3),~~ upon dismissal  
48 by the State of the charges against the person, upon entry of a nolle prosequi, or upon a finding  
49 of not guilty or other adjudication of innocence, such person may apply to the court for an order  
50 to expunge from all official records all recordation relating to his or her arrest, indictment or  
51 information, or trial. If the court determines, after hearing, that such person was not over 21

1 years of age at the time the offense for which the person was charged occurred, it shall enter  
2 such order. The clerk shall notify State and local agencies of the court's order as provided in  
3 G.S. 15A-150. No person as to whom such order has been entered shall be held thereafter under  
4 any provision of any law to be guilty of perjury or otherwise giving a false statement by reason  
5 of the person's failures to recite or acknowledge such arrest, or indictment or information, or  
6 trial in response to any inquiry made of him or her for any purpose.

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

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

31 The judge to whom the petition is presented is authorized to call upon a probation officer  
32 for additional investigation or verification of the petitioner's conduct since conviction. If the  
33 court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of  
34 Chapter 90 of the General Statutes for possessing a controlled substance included within  
35 Schedules ~~H-I~~ through VI of Article 5 of Chapter 90 of the General Statutes or for possessing  
36 drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under ~~G.S. 90-95(a)(3)~~ for  
37 ~~possession of less than one gram of cocaine, G.S. 90-95(a)(3)~~, that the petitioner was not over  
38 21 years of age at the time of the offense, that the petitioner has been of good behavior since his  
39 or her conviction, that the petitioner has successfully completed a drug education program  
40 approved for this purpose by the Department of Health and Human Services, and that the  
41 petitioner has not been convicted of a felony or misdemeanor other than a traffic violation  
42 under the laws of this State at any time prior to or since the conviction for the offense in  
43 question, it shall enter an order of expunction of the petitioner's court record. The effect of such  
44 order shall be to restore the petitioner in the contemplation of the law to the status the petitioner  
45 occupied before arrest or indictment or information or conviction. No person as to whom such  
46 order was entered shall be held thereafter under any provision of any law to be guilty of perjury  
47 or otherwise giving a false statement by reason of the person's failures to recite or acknowledge  
48 such arrest, or indictment or information, or conviction, or trial in response to any inquiry made  
49 of him or her for any purpose. The judge may waive the condition that the petitioner attend the  
50 drug education school if the judge makes a specific finding that there was no drug education  
51 school within a reasonable distance of the defendant's residence or that there were specific

1 extenuating circumstances which made it likely that the petitioner would not benefit from the  
2 program of instruction.

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

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

10 **"§ 15A-1340.18. Advanced supervised release.**

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

12 (1) "Advanced supervised release" or "ASR" means release from prison and  
13 placement on post-release supervision under this section if an eligible  
14 defendant is sentenced to active time.

15 (2) "Eligible defendant" means a defendant convicted and sentenced based upon  
16 any of the following felony classes and prior record levels:

17 a. Class D, Prior Record Level I-III.

18 b. Class E, Prior Record Level I-IV.

19 c. Class F, Prior Record Level I-V.

20 d. Class G, Prior Record Level I-VI.

21 e. Class H, Prior Record Level I-VI.

22 (3) "Risk reduction incentive" is a sentencing condition which, upon successful  
23 completion during incarceration, results in a prisoner being placed on ASR.

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

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

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

33 (e) The defendant shall be notified at sentencing that if the defendant completes the risk  
34 reduction incentives as identified by the Department, then he or she will be released on the  
35 ASR date. If the Department determines that the defendant is unable to complete the incentives  
36 by the ASR date, through no fault of the defendant, then the defendant shall be released at the  
37 ASR date.

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

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

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

48 "(d) Service of Minimum Required; Earned Time Authorization. – An offender  
49 sentenced to an active punishment shall serve the minimum term ~~imposed~~–imposed, except as  
50 provided in G.S. 15A-1340.18. The maximum term may be reduced to, but not below, the  
51 minimum term by earned time credits awarded to an offender by the Department of Correction

1 or the custodian of the local confinement facility, pursuant to rules adopted in accordance with  
2 law."

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

5  
6 **PART VI. REFOCUS CRIMINAL JUSTICE PARTNERSHIP PROGRAM**

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

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

10 "Article 6B.

11 "Treatment for Effective Community Supervision Program.

12 **"§ 143B-274.1. Short title.**

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

15 **"§ 143B-274.2. Legislative policy.**

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

19 **"§ 143B-274.3. Definitions.**

20 The following definitions apply in this Article:

- 21 (1) Certified and licensed. – North Carolina Substance Abuse Professional  
22 Practice Board certified or licensed substance abuse professionals or  
23 Department of Health and Human Services licensed agencies.  
24 (2) Department. – The Department of Correction.  
25 (3) Division. – The Department of Correction, Division of Community  
26 Corrections.  
27 (4) Eligible entity. – A local or regional government, a nongovernmental entity,  
28 or collaborative partnership that demonstrates capacity to provide services  
29 that address the criminogenic needs of offenders.  
30 (5) Program. – A community-based corrections program.  
31 (6) Secretary. – The Secretary of the Department of Correction.  
32 (7) State Board. – The State Community Corrections Advisory Board.

33 **"§ 143B-274.4. Goals of community-based corrections programs funded under this**  
34 **Article.**

35 The goals of community-based programs funded under this Article are to reduce recidivism  
36 and to reduce the rate of probation and post-release supervision revocations from the rate in the  
37 2009-2010 fiscal year.

38 **"§ 143B-274.5. Eligible population.**

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

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

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

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

1 **"§ 143B-274.6. Duties of Department of Correction.**

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

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

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

- 19 (1) Articulates a goal of reducing revocations among people on probation and  
20 post-release supervision by twenty percent (20%) from the rate in the  
21 2009-2010 fiscal year.  
22 (2) Identifies the number of people on probation and post-release supervision in  
23 each county that are in the priority population and have a likely need for  
24 substance abuse and/or mental health treatment, employment, education,  
25 and/or housing.  
26 (3) Identifies the program models that research has shown to be effective at  
27 reducing recidivism for the target population and ranks those programs  
28 based on their cost-effectiveness.  
29 (4) Propose a plan to fund the provision of the most cost-effective programs and  
30 services across the State. The plan shall describe the number and types of  
31 programs and/or services to be funded in each region of the State and how  
32 that program capacity compares with the needs of the target population in  
33 that region.

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

- 39 (1) The dollar amount and purpose of funds provided on a contractual basis to  
40 service providers for the previous fiscal year.  
41 (2) An analysis of offender participation data received, including the following:  
42 a. The number of people on probation and post-release supervision that  
43 are in the priority population that received services.  
44 b. The number of people on probation and post-release supervision that  
45 are in the priority population that did not receive services.  
46 c. The number of people on probation and post-release supervision  
47 outside of the priority population that received services.  
48 d. The type of services provided to these populations.  
49 e. The rate of revocations and successful completions for people who  
50 received services.  
51 f. Other measures as determined appropriate.

1           (3)    The dollar amount needed to provide additional services to meet the needs of  
2           the priority population in the upcoming budget year.

3           (4)    Details of personnel, travel, contractual, operating, and equipment  
4           expenditures for each program type.

5    **"§ 143B-274.7. Contract for services.**

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

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

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

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

17    **"§ 143B-274.8. State Community Corrections Advisory Board.**

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

21           (1)    A member of the Senate.

22           (2)    A member of the House of Representatives.

23           (3)    A judge of the superior court.

24           (4)    A judge of the district court.

25           (5)    A district attorney.

26           (6)    A criminal defense attorney.

27           (7)    A county sheriff.

28           (8)    A chief of a city police department.

29           (9)    Two county commissioners, one from a predominantly urban county and one  
30           from a predominantly rural county.

31           (10)   A representative of an existing community-based corrections program.

32           (11)   A member of the public who has been the victim of a crime.

33           (12)   Two rehabilitated ex-offenders.

34           (13)   A member of the business community.

35           (14)   Three members of the general public, one of whom is a person recovering  
36           from chemical dependency or who is a previous consumer of substance  
37           abuse treatment services.

38           (15)   A victim service provider.

39           (16)   A member selected from each of the following service areas: mental health,  
40           substance abuse, and employment and training.

41           (17)   A clerk of superior court.

42           (b)    The membership of the State Board shall be selected as follows:

43           (1)    The Governor shall appoint the following members: the county sheriff, the  
44           chief of a city police department, the member of the public who has been the  
45           victim of a crime, a rehabilitated ex-offender, and the members selected  
46           from each of the service areas.

47           (2)    The Lieutenant Governor shall appoint the following members: the member  
48           of the business community, one member of the general public who is a  
49           person recovering from chemical dependency or who is a previous consumer  
50           of substance abuse treatment services, and the victim service provider.



1           (3)    The Chief Justice of the North Carolina Supreme Court shall appoint the  
2           following members: the superior court judge, the district court judge, the  
3           district attorney, the clerk of superior court, the criminal defense attorney,  
4           and the representative of an existing community-based corrections program.

5           (4)    The President Pro Tempore of the Senate shall appoint the following  
6           members: the member of the Senate, the county commissioner from a  
7           predominantly urban county, and one member of the general public.

8           (5)    The Speaker of the House of Representatives shall appoint the following  
9           members: the member of the House of Representatives, the county  
10          commissioner from a predominantly rural county, and one member of the  
11          general public.

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

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

24          At the end of their respective terms of office their successors shall be appointed for terms of  
25          three years. A vacancy occurring before the expiration of the term of office shall be filled in the  
26          same manner as original appointments for the remainder of the term. Members may be  
27          reappointed without limitation.

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

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

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

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

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

46          **"§ 143B-274.9. State Community Corrections Advisory Board; powers and duties.**

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

49               (1)    To review the criteria for monitoring and evaluating community-based  
50               corrections programs.

51               (2)    To recommend community-based corrections program priorities.

1           (3) To review the minimum program standards, policies, and rules for  
2           community-based corrections programs.

3           (4) To review the evaluation of programs funded by this Article.

4 **"§ 143B-274.10. North Carolina Sentencing and Policy Advisory Commission report.**

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

9 **"§ 143B-274.11. Program types eligible for funding; community-based corrections**  
10 **programs.**

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

13           (1) Substance abuse treatment services, to include co-occurring substance abuse  
14 and mental health disorder services, residential, intensive outpatient,  
15 outpatient, peer support, and relapse prevention.

16           (2) Cognitive behavioral programming and other evidence-based programming  
17 deemed to be the most cost-effective method to reduce criminogenic needs  
18 identified by the risk/needs assessment."

19           **SECTION 6.(c)** This section becomes effective July 1, 2011.

20  
21 **PART VII. MISDEMEANANTS TO SERVE SENTENCES IN JAIL**

22           **SECTION 7.(a)** Article 81B of Chapter 15A of the General Statutes is amended by  
23 adding a new section to read:

24 **"§ 15A-1340.24. Local government confinement facility; sentence.**

25           A defendant convicted solely on a misdemeanor or misdemeanor charges under this Article,  
26 with an imposed sentence less any time credited for time served that results in a period of  
27 confinement of six months or less, shall serve the period of confinement in a local confinement  
28 facility."

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

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

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

1       "(a) A person sentenced to imprisonment for a misdemeanor under this Article or for  
2 nonpayment of a fine under Article 84 of this Chapter shall be committed for the term  
3 designated by the court to the custody of the Department of Correction or to a local  
4 confinement facility. If the sentence imposed for a misdemeanor less any time credited for time  
5 served that results in a period of confinement of is for a period of 90 days six months or less,  
6 the commitment must be to a facility other than one maintained by the Department of  
7 Correction, except as provided in G.S. 148-32.1(b).

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

16       **SECTION 7.(d)** This section becomes effective July 1, 2011, and applies to  
17 sentences imposed on or after that date.

## 18 19 **PART VIII. ANNUAL REPORT**

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

22 **"§ 164-50. Annual report on implementation of Justice Reinvestment Project.**

23 The Judicial Department, through the North Carolina Sentencing and Policy Advisory  
24 Commission, and the Department of Correction shall jointly conduct ongoing evaluations  
25 regarding the implementation of the recommendations of the Justice Reinvestment Project. The  
26 commission shall present the first evaluation report to the Joint Legislative Correction, Crime  
27 Control, and Juvenile Justice Oversight Committee and to the Chairs of the Senate and House  
28 of Representatives Appropriations Subcommittees on Justice and Public Safety by April 15,  
29 2012, and future reports shall be made annually by April 15 of each year."

## 30 31 **PART IX. TITLE**

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

## 33 34 **PART X. EFFECTIVE DATE**

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