

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 642
Committee Substitute Favorable 4/14/11
Committee Substitute #2 Favorable 5/31/11

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 e. ~~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 during any three
34 separate months during the period of probation. The six days per month
35 confinement provided for in this subdivision may only be imposed as
36 two-day or three-day consecutive periods.



- 1 (5) Substance abuse assessment, monitoring, or treatment.
2 (6) Participation in an educational or vocational skills development program,
3 including an evidence-based program.
4 (7) Submission to satellite-based monitoring, pursuant to Part 5 of Article 27A
5 of Chapter 14 of the General Statutes, if the defendant is described by
6 G.S. 14-208.40(a)(2)."

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

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

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

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

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

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

49 The Department shall adopt guidelines and procedures to implement the requirements of
50 this section, which shall include a supervisor's approval prior to exercise of the delegation of
51 authority authorized by this section. Prior to imposing confinement pursuant to subdivision (5)

1 of this subsection, the probationer must first be presented with a violation report, with the
2 alleged violations noted and advised of the right (i) to a hearing before the court on the alleged
3 violation, with the right to present relevant oral and written evidence; (ii) to have counsel at the
4 hearing, and that one will be appointed if the probationer is indigent; (iii) to request witnesses
5 who have relevant information concerning the alleged violations; and (iv) to examine any
6 witnesses or evidence. Upon the signing of a waiver of rights by the probationer, with both the
7 probation officer and a supervisor signing as witnesses, the probationer may be confined for the
8 period designated on the violation report."

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

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

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

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

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

49 ~~If the probation officer exercises authority delegated to him or her by the court pursuant to~~
50 ~~this subsection, the offender may file a motion with the court to review the action taken by the~~
51 ~~probation officer. The offender shall be given notice of the right to seek such a court review.~~

1 The Division may exercise any authority delegated to it under this subsection only if it first
2 determines that the offender has failed to comply with one or more of the conditions of
3 probation imposed by the court.

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

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

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

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

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

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

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

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

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

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

37 38 **PART II. POST-RELEASE SUPERVISION CHANGES**

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

40 **"§ 15A-1368.1. Applicability of Article 84A.**

41 This Article applies to all felons in ~~Class B1 through Class E~~ sentenced to an active
42 punishment under Article 81B of this Chapter, but does not apply to felons in Class A and
43 Class B1 sentenced to life imprisonment without parole. Prisoners subject to Articles 85 and
44 85A of this Chapter are excluded from this Article's coverage."

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

46 **"§ 15A-1368.2. Post-release supervision eligibility and procedure.**

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

1 awarded any earned time, the prisoner shall be released for post-release supervision on the date
2 equivalent to his maximum prison term less nine months.

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

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

11"

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

14 "(7a) Not to abscond, by willfully avoiding supervision or by willfully making the
15 supervisee's whereabouts unknown to the supervising probation officer."

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

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

23 (1) ~~The supervisee~~Supervisees who were convicted of an offense for which
24 registration is required under Article 27A of Chapter 14 of the General
25 Statutes and supervisees whose supervision is revoked for a violation of the
26 required controlling condition under G.S. 15A-1368.4(b) or for absconding
27 in violation of G.S. 15A-1368.4(e)(7a) will be returned to prison up to the
28 time remaining on his~~their~~ maximum imposed term~~terms~~. All other
29 supervisees will be returned to prison for three months and may be returned
30 for three months on each of two subsequent violations, after which
31 supervisees who were Class B1 through E felons may be returned to prison
32 up to the time remaining on their maximum imposed terms.

33 (2) The supervisee shall not receive any credit for days on post-release
34 supervision against the maximum term of imprisonment imposed by the
35 court under G.S. 15A-1340.13.

36 (3) Pursuant to Article 19A of Chapter 15, the Department of Correction shall
37 award a prisoner credit against any term of reimprisonment for all time spent
38 in custody as a result of revocation proceedings under G.S. 15A-1368.6.

39 (4) The prisoner is eligible to receive earned time credit against the maximum
40 prison term as provided in G.S. 15A-1340.13(d) for time served in prison
41 after the revocation."

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

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

49 3-4	4-5	5-6	6-8	7-9	8-10	9-11	10-12
50 11-14	12-15	13-16	14-17	15-18	16-20	17-21	18-22
51 19-23	20-24	21-26	22-27	23-28	24-29	25-30	26-32

1	<u>27-33</u>	<u>28-34</u>	<u>29-35</u>	<u>30-36</u>	<u>31-38</u>	<u>32-39</u>	<u>33-40</u>	<u>34-41</u>
2	<u>35-42</u>	<u>36-44</u>	<u>37-45</u>	<u>38-46</u>	<u>39-47</u>	<u>40-48</u>	<u>41-50</u>	<u>42-51</u>
3	<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>	
4	<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>
5	<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>
6	<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>
7	<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>
8	<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>
9	<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.

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

1	287-354	288-355	289-356	290-357	291-359	292-360	293-361	294-362
2	295-363	296-365	297-366	298-367	299-368	300-369	301-371	302-372
3	303-373	304-374	305-375	306-377	307-378	308-379	309-380	310-381
4	311-383	312-384	313-385	314-386	315-387	316-389	317-390	318-391
5	319-392	320-393	321-395	322-396	323-397	324-398	325-399	326-401
6	327-402	328-403	329-404	330-405	331-407	332-408	333-409	334-410
7	335-411	336-413	337-414	338-415	339-416			
8	<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>
9	<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>
10	<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>
11	<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>
12	<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>
13	<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>
14	<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>
15	<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>
16	<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>
17	<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>
18	<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>
19	<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>
20	<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>
21	<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>
22	<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>
23	<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>
24	<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>
25	<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>
26	<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>
27	<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>
28	<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>
29	<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>
30	<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>
31	<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>
32	<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>
33	<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>
34	<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>
35	<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>
36	<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>
37	<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>
38	<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>
39	<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>
40	<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>
41	<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>
42	<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>
43	<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>
44	<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>
45	<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>
46	<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>
47	<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>
48	<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

1 punishment for a specific crime, when the minimum sentence is 340 months or more, the
2 corresponding maximum term of imprisonment shall be equal to the sum of the minimum term
3 of imprisonment and twenty percent (20%) of the minimum term of imprisonment, rounded to
4 the next highest month, plus ~~nine~~12 additional months."

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

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

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

11 "Article 2D.

12 "Habitual Breaking and Entering Status Offense.

13 **"§ 14-7.25. Definitions.**

14 The following definitions apply in this Article:

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

32 **"§ 14-7.26. Habitual breaking and entering status offender.**

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

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

43 **"§ 14-7.27. Punishment.**

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

47 **"§ 14-7.28. Charge of habitual breaking and entering status offender.**

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

1 charging the defendant as a status offender shall be separate from the indictment charging the
2 person with the principal felony offense of breaking and entering.

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

11 **"§ 14-7.29. Evidence of prior convictions of breaking and entering.**

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

21 **"§ 14-7.30. Verdict and judgment.**

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

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

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

36 **"§ 14-7.31. Sentencing of status offenders.**

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

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

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

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

49 **"§ 14-7.1. Persons defined as habitual felons.**

50 Any person who has been convicted of or pled guilty to three felony offenses in any federal
51 court or state court in the United States or combination thereof is declared to be an habitual

1 ~~felon~~-felon and may be charged as a status offender pursuant to this Article. For the purpose of
2 this Article, a felony offense is defined as an offense which is a felony under the laws of the
3 State or other sovereign wherein a plea of guilty was entered or a conviction was returned
4 regardless of the sentence actually imposed. Provided, however, that federal offenses relating to
5 the manufacture, possession, sale and kindred offenses involving intoxicating liquors shall not
6 be considered felonies for the purposes of this Article. For the purposes of this Article, felonies
7 committed before a person attains the age of 18 years shall not constitute more than one felony.
8 The commission of a second felony shall not fall within the purview of this Article unless it is
9 committed after the conviction of or plea of guilty to the first felony. The commission of a third
10 felony shall not fall within the purview of this Article unless it is committed after the
11 conviction of or plea of guilty to the second felony. Pleas of guilty to or convictions of felony
12 offenses prior to July 6, 1967, shall not be felony offenses within the meaning of this Article.
13 Any felony offense to which a pardon has been extended shall not for the purpose of this
14 Article constitute a felony. The burden of proving such pardon shall rest with the defendant and
15 the State shall not be required to disprove a pardon."

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

17 **"§ 14-7.3. Charge of habitual felon.**

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

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

32 **"§ 14-7.6. Sentencing of habitual felons.**

33 When an habitual felon as defined in this Article commits any felony under the laws of the
34 State of North Carolina, the felon must, upon conviction or plea of guilty under indictment as
35 provided in this Article (except where the felon has been sentenced as a Class A, B1, or B2
36 felon) be sentenced ~~as a Class C felon, at a felony class level that is four classes higher than the~~
37 principal felony for which the person was convicted; but under no circumstances shall an
38 habitual felon be sentenced at a level higher than a Class C felony. In determining the prior
39 record level, convictions used to establish a person's status as an habitual felon shall not be
40 used. Sentences imposed under this Article shall run consecutively with and shall commence at
41 the expiration of any sentence being served by the person sentenced under this section."

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

48
49 **PART IV. LIMIT TIME/CERTAIN VIOLATIONS OF PROBATION**

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

1 "(3a) Not to abscond, by willfully avoiding supervision or by willfully making the
2 defendant's whereabouts unknown to the supervising probation officer."

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

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

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

21 "(d2) Confinement in Response to Violation. – When a defendant has violated a condition
22 of probation other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), the court may impose a
23 90-day period of confinement, but may not revoke probation unless the defendant has
24 previously received a total of two 90-day periods of confinement under this subsection. A
25 defendant may receive only two 90-day periods of confinement under this subsection. If the
26 time remaining on the defendant's maximum imposed sentence is less than 90 days, then the
27 term of confinement is for the remaining period of the sentence. Confinement under this section
28 shall be credited pursuant to G.S. 15-196.1."

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

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

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

33 "**§ 90-96. Conditional discharge for first offense.**

34 (a) Whenever any person who has not previously been convicted of (i) any felony
35 offense under any state or federal laws; (ii) any offense under this Article–Article; or (iii) an
36 offense under any statute of the United States or any state relating to those substances included
37 in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of Chapter 9090
38 of the General Statutes pleads guilty to or is found guilty of (i) a misdemeanor under this
39 Article by possessing a controlled substance included within Schedules ~~H-I~~ through VI of this
40 Article or by possessing drug paraphernalia as prohibited by G.S. 90 113.22, or (ii) a felony
41 under G.S. 90-95(a)(3), -G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court
42 ~~may, shall,~~ without entering a judgment of guilt and with the consent of such person, defer
43 further proceedings and place him on probation upon such reasonable terms and conditions as it
44 may require. Notwithstanding the provisions of G.S. 15A 1342(c) or any other statute or law,
45 probation may be imposed under this section for an offense under this Article for which the
46 prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the
47 court may allow the defendant to participate in a drug education program approved for this
48 purpose by the Department of Health and Human ~~Services–Services~~ or in the Treatment for
49 Effective Community Supervision Program under Article 6B of Chapter 143B of the General
50 Statutes. Upon violation of a term or condition, the court may enter an adjudication of guilt and
51

1 proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall
2 discharge such person and dismiss the proceedings against him. Discharge and dismissal under
3 this section shall be without court adjudication of guilt and shall not be deemed a conviction for
4 purposes of this section or for purposes of disqualifications or disabilities imposed by law upon
5 conviction of a crime including the additional penalties imposed for second or subsequent
6 convictions under this Article. Discharge and dismissal under this section or G.S. 90 113.14
7 may occur only once with respect to any person. Disposition of a case to determine discharge
8 and dismissal under this section at the district court division of the General Court of Justice
9 shall be final for the purpose of appeal. Prior to taking any action to discharge and dismiss
10 under this section the court shall make a finding that the defendant has no record of previous
11 convictions ~~under the "North Carolina Controlled Substances Act", Article 5, Chapter 90, the~~
12 ~~"North Carolina Toxic Vapors Act", Article 5A, Chapter 90, or the "Drug Paraphernalia Act",~~
13 ~~Article 5B, Chapter 90, as provided in this subsection.~~

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

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

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

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

34 For the purposes of determining whether the conviction is a first conviction or whether a
35 person has already had discharge and dismissal, no prior offense occurring more than seven
36 years before the date of the current offense shall be considered. In addition, convictions for
37 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
38 90-113.11, or 90-113.12, or 90-113.22 shall be considered previous convictions.

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

1 against the person, and shall deny application for expunction of all recordation of defendant's
2 arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant
3 to G.S. 15A-145.2. A person may obtain a hearing before the court of original jurisdiction prior
4 to revocation of probation or denial of application for expunction.

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

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

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

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

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

30"

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

32 "**§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the**
33 **time of the offense of certain drug offenses.**

34 ...

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

49 (c) Whenever any person who has not previously been convicted of (i) any felony
50 offense under any state or federal laws; (ii) any offense under Chapter 90 of the General
51 Statutes; or (iii) an offense under any statute of the United States or any state relating to

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

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

29 The judge to whom the petition is presented is authorized to call upon a probation officer
30 for additional investigation or verification of the petitioner's conduct since conviction. If the
31 court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of
32 Chapter 90 of the General Statutes for possessing a controlled substance included within
33 Schedules ~~II-I~~ through VI of Article 5 of Chapter 90 of the General Statutes or for possessing
34 drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under ~~G.S. 90-95(a)(3)~~ for
35 ~~possession of less than one gram of cocaine, G.S. 90-95(a)(3), that the petitioner has no~~
36 disqualifying previous convictions as set forth in this subsection, that the petitioner was not
37 over 21 years of age at the time of the offense, that the petitioner has been of good behavior
38 since his or her conviction, that the petitioner has successfully completed a drug education
39 program approved for this purpose by the Department of Health and Human Services, and that
40 the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation
41 under the laws of this State at any time prior to or since the conviction for the offense in
42 question, it shall enter an order of expunction of the petitioner's court record. The effect of such
43 order shall be to restore the petitioner in the contemplation of the law to the status the petitioner
44 occupied before arrest or indictment or information or conviction. No person as to whom such
45 order was entered shall be held thereafter under any provision of any law to be guilty of perjury
46 or otherwise giving a false statement by reason of the person's failures to recite or acknowledge
47 such arrest, or indictment or information, or conviction, or trial in response to any inquiry made
48 of him or her for any purpose. The judge may waive the condition that the petitioner attend the
49 drug education school if the judge makes a specific finding that there was no drug education
50 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) A defendant released on the ASR date is subject to post-release supervision under
44 this Article. Notwithstanding the provisions in G.S. 15A-1368.3(c), if the defendant has been
45 returned to prison for three, three-month periods of confinement, a subsequent violation shall
46 result in the defendant returning to prison to serve the time remaining on the maximum
47 imposed term, and is ineligible for further post-release supervision regardless of the amount of
48 time remaining to be served.

49 (h) The Department shall adopt policies and procedures for the assessment to occur at
50 diagnostic processing, for documentation of the inmate's progress, and for termination from the

1 incentive program due to a lack of progress or a pattern of noncompliance in the program or
2 with other Department rules or regulations."

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

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

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

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

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

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

16 "Article 6B.

17 "Treatment for Effective Community Supervision Program.

18 **"§ 143B-274.1. Short title.**

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

21 **"§ 143B-274.2. Legislative policy.**

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

25 **"§ 143B-274.3. Definitions.**

26 The following definitions apply in this Article:

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

39 **"§ 143B-274.4. Goals of community-based corrections programs funded under this** 40 **Article.**

41 The goals of community-based programs funded under this Article are to reduce recidivism
42 and to reduce the rate of probation and post-release supervision revocations from the rate in the
43 2009-2010 fiscal year.

44 **"§ 143B-274.5. Eligible population.**

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

- 48 (1) Received a nonincarcerative sentence of a community punishment.
 - 49 (2) Received a nonincarcerative sentence of an intermediate punishment.
- 50

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

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

4 (1) Offenders convicted of a felony or offenders sentenced under G.S. 90-96
5 conditional discharge for a felony offense.

6 (2) Offenders identified by the Department of Correction using a validated risk
7 assessment instrument to have a high likelihood of reoffending and a
8 moderate to high need for substance abuse treatment.

9 "**§ 143B-274.6. Duties of Department of Correction.**"

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

12 (1) To enter into contractual agreements with eligible entities for the operation
13 of community-based corrections programs and monitor compliance with
14 those agreements.

15 (2) To develop the minimum program standards, policies, and rules for
16 community-based corrections programs and to consult with the Department
17 of Health and Human Services on those standards, policies, and rules that are
18 applicable to licensed and credentialed substance abuse services.

19 (3) To monitor, oversee, and evaluate contracted service providers.

20 (4) To act as an information clearinghouse regarding community-based
21 corrections programs.

22 (5) To collaborate with the Department of Health and Human Services on
23 focusing treatment resources on high-risk and moderate to high need
24 offenders on probation, parole, and post-release supervision.

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

27 (1) Articulates a goal of reducing revocations among people on probation and
28 post-release supervision by twenty percent (20%) from the rate in the
29 2009-2010 fiscal year.

30 (2) Identifies the number of people on probation and post-release supervision in
31 each county that are in the priority population and have a likely need for
32 substance abuse and/or mental health treatment, employment, education,
33 and/or housing.

34 (3) Identifies the program models that research has shown to be effective at
35 reducing recidivism for the target population and ranks those programs
36 based on their cost-effectiveness.

37 (4) Propose a plan to fund the provision of the most cost-effective programs and
38 services across the State. The plan shall describe the number and types of
39 programs and/or services to be funded in each region of the State and how
40 that program capacity compares with the needs of the target population in
41 that region.

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

48 (1) The dollar amount and purpose of funds provided on a contractual basis to
49 service providers for the previous fiscal year.

50 (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.

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

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

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

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

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

17 **(5)** The Speaker of the House of Representatives shall appoint the following
18 members: the member of the House of Representatives, the county
19 commissioner from a predominantly rural county, and one member of the
20 general public.

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

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

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

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

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

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

44 **(g)** Any member who has an interest in a governmental agency or unit or private
45 nonprofit agency which is applying for a Treatment for Effective Community Supervision
46 Program contract or which has received a contract and which is the subject of an inquiry or
47 vote by a contract oversight committee, shall publicly disclose that interest on the record and
48 shall take no part in discussion or have any vote in regard to any matter directly affecting that
49 particular grant applicant or grantee. "Interest" in a grant applicant or grantee means a formal
50 and direct connection to the entity, including, but not limited to, employment, partnership,

1 serving as an elected official, board member, director, officer, or trustee, or being an immediate
2 family member of someone who has such a connection to the grant applicant or grantee.

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

5 **"§ 143B-274.9. State Community Corrections Advisory Board; powers and duties.**

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

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

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

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

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

14 **"§ 143B-274.10. North Carolina Sentencing and Policy Advisory Commission report.**

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

19 **"§ 143B-274.11. Program types eligible for funding; community-based corrections**
20 **programs.**

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

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

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

29 **SECTION 6.(c)** This section becomes effective July 1, 2011. The Department of
30 Correction may enter into contracts under this section with current program providers in the
31 Criminal Justice Partnership Program on a sole-source basis during the 2011-2012 fiscal year.
32

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

34 **SECTION 7.(a)** It is the intent of the General Assembly to authorize the
35 Department of Correction to enter into voluntary agreements with counties to provide housing
36 for misdemeanants serving periods of confinement of more than 90 days and up to 180 days,
37 except for those serving a sentence for an impaired driving offense. It is further the intent of the
38 General Assembly, that the Department of Correction in conjunction with the North Carolina
39 Sheriffs' Association establish a program for housing misdemeanants serving periods of
40 confinement of more than 90 days and up to 180 days, except for those serving sentences for an
41 impaired driving offense. It is also the intent of the General Assembly that the Department of
42 Correction contract with the North Carolina Sheriffs' Association to provide a service that
43 identifies space in local confinement facilities that is available for housing these
44 misdemeanants.

45 The General Assembly intends that the cost of housing and caring for these misdemeanants,
46 including, but not limited to, care, supervision, transportation, medical, and any other related
47 costs be covered by State funds and not be imposed as a local cost. Therefore, the General
48 Assembly intends that the funds in the Statewide Misdemeanor Confinement Fund be used to
49 provide funding to cover the costs of managing a system for providing that housing of
50 misdemeanants in local confinement facilities as well as reimbursing the counties for housing
51 and related expenses for those misdemeanants.

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

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

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

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

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

15 "(b) In the event that the custodian of the local confinement facility certifies in writing to
16 the clerk of the superior court in the county in which ~~said~~the local confinement facility is
17 located that the local confinement facility is filled to capacity, or that the facility cannot
18 reasonably accommodate any more prisoners due to segregation requirements for particular
19 prisoners, or that the custodian anticipates, in light of local experiences, an influx of temporary
20 prisoners at that time, or if the local confinement facility does not meet the minimum standards
21 published pursuant to G.S. 153A-221, any judge of the district court in the district court district
22 as defined in G.S. 7A-133 where the facility is located, or any superior court judge who has
23 jurisdiction pursuant to G.S. 7A-47.1 or G.S. 7A-48 in a district or set of districts as defined in
24 G.S. 7A-41.1 where the facility is located may order that ~~the~~ a prisoner not housed pursuant to
25 the Statewide Misdemeanor Confinement Program established in subsection (b1) of this section
26 be transferred to any other qualified local confinement facility within that district or within
27 another such district where space is available, including a satellite jail unit operated pursuant to
28 G.S. 153A-230.3 if the prisoner is a non-violent misdemeanor, which local facility shall accept
29 the transferred prisoner, if the prison population has exceeded a manageable level as provided
30 for in G.S. 148-4.1(a). If no such local confinement facility is available, then any such judge
31 may order the prisoner transferred to such camp or facility as the proper authorities of the
32 Department of Correction shall designate, notwithstanding that the term of imprisonment of the
33 prisoner is 90 days or less. In no event, however, shall a prisoner whose term of imprisonment
34 is less than 30 days be assigned or ordered transferred to any such camp or facility.prisoner.

35 If no other local confinement facility is available and the reason for the requested transfer
36 is that the local confinement facility that would be required to house the prisoner cannot
37 reasonably accommodate any more prisoners due to segregation requirements for particular
38 prisoners or the local facility does not meet the minimum standards published pursuant to
39 G.S. 153A-221, then the judge may order that a prisoner not housed pursuant to the Statewide
40 Misdemeanor Confinement Program established in subsection (b1) of this section be
41 transferred to a facility operated by the Department of Correction as designated by the
42 Department of Correction. In no event, however, shall a prisoner whose term of imprisonment
43 is less than 30 days be assigned or ordered transferred to a facility operated by the Department
44 of Correction."

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

46 "(b1) The Statewide Misdemeanor Confinement Program is established. The Program
47 shall provide for the housing of misdemeanants from all counties serving sentences imposed for
48 a period of more than 90 days and up to 180 days, except for those serving sentences for an
49 impaired driving offense under G.S. 20-138.1. Those misdemeanants shall be confined in local
50 confinement facilities except as provided in subsections (b2) and (b3) of this section. The
51 Program shall address methods for the placement and transportation of inmates and

1 reimbursement to counties for the housing of those inmates. Any county that voluntarily agrees
2 to house misdemeanants from that county or from other counties pursuant to the Program may
3 enter into a written agreement with the Department of Correction to do so.

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

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

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

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

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

20 "(b2) The custodian of a local confinement facility may request a judicial order to transfer
21 a misdemeanant housed pursuant to the Statewide Misdemeanor Confinement Program to a
22 facility operated by the Department of Correction by certifying in writing to the clerk of the
23 superior court in the county in which the local confinement facility is located that:

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

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

50 (b3) A misdemeanant housed under the Statewide Misdemeanor Confinement Program
51 established pursuant to subsection (b1) of this section may be transferred by the North Carolina

1 Sheriffs' Association to a facility operated by the Department of Correction if the North
2 Carolina Sheriffs' Association determines that the local confinement facilities available for
3 housing misdemeanants under the Program are filled to capacity. The Department of Correction
4 shall be reimbursed from the Statewide Misdemeanor Confinement Fund for the costs of
5 housing the misdemeanant, including the care, supervision, and transportation of the
6 misdemeanant."

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

9 **"§ 148-10.4. Statewide Misdemeanor Confinement Fund.**

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

11 (1) Department. – Department of Correction.

12 (2) Fund. – The Statewide Misdemeanor Confinement Fund established by this
13 section.

14 (3) Program. – Statewide Misdemeanor Confinement Program established under
15 G.S. 148-32.1(b2).

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

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

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

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

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

29 (2) Reimbursements to the Department of Correction for the cost of housing
30 misdemeanants transferred to the Department pursuant to G.S. 148-32.1(b2),
31 including the care, supervision, and transportation of those misdemeanants.

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

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

36 (e) Operating and Administrative Expenses. – Ten percent (10%) of the monthly
37 receipts collected and credited to the Statewide Misdemeanor Confinement Fund shall be
38 transferred on a monthly basis to the Sheriffs' Association to be used to support the Program
39 and for administrative and operating expenses of the Association and its staff. One percent
40 (1%) of the monthly receipts collected and credited to the Statewide Misdemeanor
41 Confinement Fund shall be transferred on a monthly basis to the General Fund to be allocated
42 to the Department of Correction for its administrative and operating expenses for the Program."

43 **SECTION 7.(i)** The North Carolina Sheriffs' Association shall report to the Joint
44 Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by October
45 1, 2011, on the implementation of this Part, and shall report thereafter as requested by the
46 Committee. The report shall include relevant information collected monthly by the Sheriffs'
47 Association regarding the jail capacity and population in each county.

48 **SECTION 7.(j)** The General Assembly finds that while the Program developed
49 pursuant to G.S. 148-32.1(b1) as enacted by subsection (e) of this section shall be available
50 statewide on January 1, 2012, it may be available to some counties at an earlier date.
51 Therefore, notwithstanding any other provision of law, a misdemeanant, who has a sentence

1 imposed of more than 90 days and up to 180 days prior to January 1, 2012, excluding those
2 serving sentences for an impaired driving offense under G.S. 20-138.1, may be transferred or
3 reassigned to a local confinement facility designated by the Sheriffs' Association as provided
4 by the Program developed pursuant to G.S. 148-32.1(b1).

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

9 **SECTION 7.(l)** G.S. 148-32.1(b1), as enacted by subsection (e) of this section,
10 and subsections (a), (h), (i), (j), (k), and (l) of this section become effective July 1, 2011. The
11 remainder of this section becomes effective January 1, 2012, and applies to sentences imposed
12 on or after that date.

13 14 **PART VIII. ANNUAL REPORT**

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

17 **"§ 164-50. Annual report on implementation of Justice Reinvestment Project.**

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

25 26 **PART IX. TITLE**

27 **SECTION 9.** This act shall be known as "The Justice Reinvestment Act of 2011."
28

29 **PART X. EFFECTIVE DATE**

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