

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH70314-LL-171 (3/23)

Short Title: Court-Imposed Post-Release Punishment.

(Public)

Sponsors: Representative Haire.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR COURT-IMPOSED AND ENFORCED
POST-RELEASE PUNISHMENT OF PRISONERS UNDER STRUCTURED
SENTENCING.

The General Assembly of North Carolina enacts:

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

"(1) Active punishment. – A sentence in a criminal case that requires an offender to serve a sentence of imprisonment and is not suspended. For Class B1, B2, C, D, and E felonies, other than felonies for which the offender receives a sentence of life imprisonment without parole, the sentence of imprisonment includes a term of post-release punishment, as provided in G.S. 15A-1340.13(d1). Special probation, as defined in G.S. 15A-1351, is not an active punishment."

SECTION 2. G.S. 15A-1340.13 is amended by adding a new subsection to

read:

"(d1) For Class B1, B2, C, D, and E felonies, other than felonies for which the offender receives a sentence of life imprisonment without parole:

- (1) The term of imprisonment includes a term of post-release punishment, to which the provisions of Article 84B of this Chapter apply.
- (2) The term of post-release punishment shall begin on the date calculated by the Department by determining the offender's maximum term of imprisonment, less nine months and less any earned time credits awarded pursuant to subsection (d) of this section.
- (3) The duration of the term of post-release supervision shall be:
 - a. Five years for felonies that are subject to the registration requirement of Article 27A of Chapter 14 of the General Statutes relating to sex offender registration;

1 b. Nine months for all other felonies.

2 (4) The last nine months of the term of imprisonment shall be suspended
3 during the term of post-release punishment and may be activated as
4 provided in Article 84B of this Chapter."

5 **SECTION 3.** G.S. 15A-1340.15(b) reads as rewritten:

6 "(b) Consolidation of Sentences. – If an offender is convicted of more than one
7 offense at the same time, the court may consolidate the offenses for judgment and
8 impose a single judgment for the consolidated offenses. The judgment shall contain a
9 sentence disposition specified for the class of offense and prior record level of the most
10 serious offense, and its minimum sentence of imprisonment shall be within the ranges
11 specified for that class of offense and prior record level, unless applicable statutes
12 require or authorize another minimum sentence of imprisonment. If one or more of the
13 offenses is a Class B1, B2, C, D, or E felony, other than a felony for which the offender
14 receives a term of life imprisonment without parole, the term of imprisonment for the
15 consolidated offenses shall contain one term of post-release punishment, as provided in
16 G.S. 15A-1340.13(d1)."

17 **SECTION 4.** G.S. 15A-1342(c) reads as rewritten:

18 "(c) Conditions; Suspended Sentence. – When the court places a convicted
19 offender on probation, it must determine conditions of probation as provided in
20 G.S. 15A-1343. In addition, it must impose a suspended sentence of imprisonment,
21 determined as provided in ~~Article 83, Imprisonment,~~ Article 83 of this Chapter, which
22 may be activated upon violation of conditions of probation."

23 **SECTION 5.** G.S. 15A-1344(d) reads as rewritten:

24 "(d) Extension and Modification; Response to Violations. – At any time prior to
25 the expiration or termination of the probation period, the court may after notice and
26 hearing and for good cause shown extend the period of probation up to the maximum
27 allowed under G.S. 15A-1342(a) and may modify the conditions of probation. The
28 probation period shall be tolled if the probationer shall have pending against him
29 criminal charges in any court of competent jurisdiction, which, upon conviction, could
30 result in revocation proceedings against him for violation of the terms of this probation.
31 The hearing may be held in the absence of the defendant, if he fails to appear for the
32 hearing after a reasonable effort to notify him. If a convicted defendant violates a
33 condition of probation at any time prior to the expiration or termination of the period of
34 probation, the court, in accordance with the provisions of G.S. 15A-1345, may continue
35 him on probation, with or without modifying the conditions, may place the defendant on
36 special probation as provided in subsection (e), or, if continuation, modification, or
37 special probation is not appropriate, may revoke the probation and activate the
38 suspended sentence imposed at the time of initial sentencing, if any, including the term
39 of post-release punishment, or may order that charges as to which prosecution has been
40 deferred be brought to trial; provided that probation may not be revoked solely for
41 conviction of a Class 3 misdemeanor. The court, before activating a sentence to
42 imprisonment established when the defendant was placed on probation, may reduce the
43 ~~sentence,~~ sentence of imprisonment, but the reduction shall be consistent with
44 subsection (d1) of this section. A sentence activated upon revocation of probation

1 commences on the day probation is revoked and runs concurrently with any other period
2 of probation, parole, or ~~imprisonment~~ imprisonment, including the term of post-release
3 punishment, to which the defendant is subject during that period unless the revoking
4 judge specifies that it is to run consecutively with the other period."

5 **SECTION 6.** G.S. 15A-1354 reads as rewritten:

6 "**§ 15A-1354. Concurrent and consecutive terms of imprisonment.**

7 (a) Authority of Court. – When multiple sentences of imprisonment are imposed
8 on a person at the same time or when a term of imprisonment is imposed on a person
9 who is already subject to an undischarged term of imprisonment, including a term of
10 imprisonment in another jurisdiction, the sentences may run either concurrently or
11 consecutively, as determined by the court. If not specified or not required by statute to
12 run consecutively, sentences shall run concurrently.

13 (b) Effect of Consecutive Terms. – In determining the effect of consecutive
14 sentences imposed under authority of this Article and the manner in which they will be
15 served, the Department of Correction must treat the defendant as though he has been
16 committed for a single term with the following incidents:

- 17 (1) The maximum prison sentence consists of the total of the maximum
18 terms of the consecutive sentences, less nine months for each of the
19 second and subsequent sentences imposed for Class B through Class E
20 felonies; and
21 (2) The minimum term consists of the total of the minimum terms of the
22 consecutive ~~sentences~~ sentences; and
23 (3) The term of imprisonment includes one term of post-release
24 punishment."

25 **SECTION 7.** Article 84A of Chapter 15A of the General Statutes is
26 repealed.

27 **SECTION 8.** Chapter 15A of the General Statutes is amended by adding a
28 new Article to read:

29 "Article 84B.

30 "Judicially Imposed and Enforced Post-Release Supervision.

31 **"§ 15A-1370. Applicability of Article 84B.**

32 This Article applies to all offenders convicted of felonies in Class B1 through Class
33 E who are sentenced to an active punishment under Article 81B of this Chapter, whether
34 originally or upon activation of a suspended sentence, but does not apply to offenders
35 convicted of felonies in Class B1 who are sentenced to life imprisonment without
36 parole. Prisoners subject to Articles 84A, 85, and 85A of this Chapter are excluded from
37 this Article's coverage.

38 **"§ 15A-1370.1. Definitions.**

39 As used in this Article:

- 40 (1) "Department" means the North Carolina Department of Correction and
41 includes any employee of the Department acting on behalf of the
42 Department under this Article.
43 (2) "Offender" means any person sentenced to post-release punishment
44 pursuant to G.S. 15A-1340.13.

"§ 15A-1370.2. Purposes of post-release punishment.

The purposes of post-release punishment are to:

- (1) Monitor and control the offender in the community;
- (2) Assist the offender in reintegrating into society;
- (3) Collect restitution and other court indebtedness from the prisoner; and
- (4) Continue the prisoner's treatment or education.

"§ 15A-1370.3. Purposes of court imposition and enforcement.

The principal purposes of court imposition and enforcement of post-release punishment are to:

- (1) Assure that those conditions are determined by the court at the time of sentencing and enforced by the court while the offender is on release under post-release punishment;
- (2) Acknowledge and emphasize that release from imprisonment under post-release punishment is a form of punishment involving significant restrictions on the liberty of the offender;
- (3) Assure due process of law in the imposition and enforcement of post-release punishment;
- (4) Protect the rights of victims under Article 46 of this Chapter.

"§ 15A-1370.4. Imposition of post-release punishment; provisions of judgment.

(a) When sentencing an offender for an offense to which this Article applies, the court shall suspend the last nine months of the offender's term of imprisonment and impose a term of post-release punishment as provided in G.S. 15A-1340.13(d1).

(b) The sentencing judgment:

- (1) Shall provide that:
 - a. The term of post-release punishment shall begin on the date calculated by the Department by determining the offender's maximum term of imprisonment, less nine months and less any earned time credits awarded pursuant to G.S. 15A-1340.13(d).
 - b. Immediately upon the commencement of the offender's term of post-release punishment, the offender shall be released from imprisonment under post-release supervision; and
 - c. The last nine months of the term of imprisonment shall be suspended during the term of post-release punishment.
- (2) Shall state the duration of the term of post-release supervision.
- (3) Shall require that the offender, as a condition of the offender's release on post-release supervision, comply with all the mandatory conditions set forth in G.S. 15A-1370.6;
- (4) May require that the offender comply with one or more of the discretionary conditions set forth in G.S. 15A-1370.6, and may also delegate to the Department the authority to establish or modify discretionary conditions of the offender's release; unless the judgment provides otherwise, the delegation of that authority to the Department is presumed; and

1 (5) Shall provide that the court may, after notice and hearing and upon
2 necessary findings, revoke the offender's post-release punishment and
3 activate the portion of the term of imprisonment that was suspended
4 pursuant to subsection (a) of this section.

5 **"§ 15A-1370.5. Planning for post-release punishment.**

6 (a) Not fewer than 30 days before the projected date on which an offender will be
7 released from imprisonment under a term of post-release punishment, the Department
8 shall prepare a detailed and individualized plan for the offender's supervision while
9 serving that term. The plan shall maximize the likelihood that post-release punishment
10 will achieve the purposes of post-release punishment set forth in G.S. 15A-1370.2.

11 (b) To facilitate preparation of a plan when the offender is imprisoned in a local
12 confinement facility, the administrator of that facility shall, not fewer than 30 days
13 before the projected date on which the offender will be released from imprisonment
14 under a term of post-release punishment, notify the Department of that date.

15 (c) Based on the plan developed pursuant to this section, the Department shall
16 determine the level of supervision and the nature and number of discretionary
17 conditions of release necessary for the plan to succeed. If the court has delegated to the
18 Department the authority to establish or modify discretionary conditions of release, the
19 Department shall do so on its own authority. Otherwise the Department shall impose the
20 discretionary conditions determined by the court and shall as soon as practicable seek to
21 obtain a modification of the discretionary conditions pursuant to G.S. 15A-1370.6(f).

22 **"§ 15A-1370.6. Conditions of release under term of post-release punishment.**

23 (a) All conditions of release to serve the term of post-release punishment shall be
24 imposed, interpreted, applied, and enforced so as to achieve the purposes of post-release
25 punishment stated in G.S. 15A-1370.2.

26 (b) Mandatory Conditions – All Offenders. – For each offender, the mandatory
27 conditions of release to serve the term of post-release punishment are that the offender:

28 (1) Not commit another crime during the period for which the offender
29 remains subject to revocation.

30 (2) Not use, possess, or control any illegal drug or controlled substance
31 unless it has been prescribed for the offender by a licensed physician
32 and is in the original container with the prescription number affixed on
33 it; not knowingly associate with any known or previously convicted
34 users, possessors, or sellers of any illegal drugs or controlled
35 substances; and not knowingly be present at or frequent any place
36 where illegal drugs or controlled substances are sold, kept, or used.

37 (3) Comply with a court order to pay court costs and costs for appointed
38 counsel or public defender in the case for which the offender was
39 convicted.

40 (4) Not possess a firearm, destructive device, or other dangerous weapon
41 unless granted written permission by the Department.

42 (5) Report to a post-release supervision officer at reasonable times and in
43 a reasonable manner, as directed by the officer, or, if released under
44 intensive supervision, submit to supervision by post-release

1 supervision officers assigned to the Intensive Supervision Program
2 established pursuant to G.S. 143B-262(c), and abide by the rules
3 adopted for that Program.

4 (6) Permit any post-release supervision officer to visit at reasonable times
5 at the offender's home or elsewhere.

6 (7) Remain within any geographic limits prescribed in the judgment or, if
7 no such limits are prescribed in the judgment, by the post-release
8 supervision officer, unless granted written permission to leave by the
9 post-release supervision officer.

10 (8) Answer all reasonable inquiries by a post-release supervision officer
11 and obtain prior approval from the post-release supervision officer for
12 any change in address or employment.

13 (9) Promptly notify the post-release supervision officer of any change in
14 address or employment.

15 (10) Submit at reasonable times to searches of the offender's person,
16 including drug testing, by a post-release supervision officer for
17 purposes reasonably related to the post-release supervision. The
18 offender shall not be required to submit to any other searches that
19 would otherwise be unlawful. Whenever the search consists of testing
20 for the presence of illegal drugs, the offender may also be required to
21 reimburse the Department of Correction for the actual cost of drug
22 testing and drug screening, if the results are positive.

23 (11) Make restitution or reparation as provided in G.S. 148-57.1.

24 (12) Comply with an order from a court of competent jurisdiction regarding
25 the payment of an obligation of the offender in connection with any
26 judgment rendered by the court.

27 (13) Pay the supervision fee provided for in subsection (i) of this section.

28 (c) Additional Mandatory Conditions; Sex Offenders and Persons Convicted of
29 Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – For each offender
30 who has been convicted of an offense that is a reportable conviction as defined in
31 G.S. 14-208.6(4), or that involves the physical, mental, or sexual abuse of a minor,
32 post-release, the additional mandatory conditions of release on post-release punishment
33 are that the offender:

34 (1) Register as required by G.S. 14-208.7 if the offense is a reportable
35 conviction as defined by G.S. 14-208.6(4).

36 (2) Participate in evaluation and treatment as is necessary to complete a
37 prescribed course of psychiatric, psychological, or other rehabilitative
38 treatment as ordered by the court.

39 (3) Not communicate with, be in the presence of, or found in or on the
40 premises of, the victim of the offense.

41 (4) Not reside in a household with any minor child if the offense is one in
42 which there is evidence of sexual abuse of a minor.

43 (5) Not reside in a household with any minor child if the offense is one in
44 which there is evidence of physical or mental abuse of a minor, unless

1 the court expressly finds that it is unlikely that the offender's harmful
2 or abusive conduct will recur and that it would be in the child's best
3 interest to allow the offender to reside in the same household with a
4 minor child.

5 (6) Comply with a court order to pay the costs of any reintegrative
6 treatment for a minor and a minor's parents or custodians.

7 (7) Abide by the rules and regulations of the Department for sex offender
8 supervision.

9 (d) Discretionary Conditions – All Offenders. – For each offender, the
10 discretionary conditions of release to serve the term of post-release punishment are that
11 the offender:

12 (1) Work faithfully at suitable employment or faithfully pursue a course of
13 study or vocational training that will equip the offender for suitable
14 employment.

15 (2) Undergo available medical or psychiatric treatment and remain in a
16 specified institution if required for that purpose.

17 (3) Attend or reside in a facility providing rehabilitation, instruction,
18 recreation, or residence for persons on post-release supervision.

19 (4) Support the offender's dependents and meet other family
20 responsibilities.

21 (5) In the case of an offender who attended a basic skills program during
22 incarceration, continue attending a basic skills program in pursuit of a
23 General Education Development Degree or adult high school diploma.

24 (6) Remain in one or more specified places for a specified period or
25 periods each day and wear a device that permits the offender's
26 compliance with the condition to be monitored electronically.

27 (7) Submit to one or more of the intermediate punishments specified in
28 G.S. 15A-1340.11(6)b. through G.S. 15A-1340.11(6)f.

29 (8) Abide by a curfew.

30 (9) Participate in a treatment, counseling, or other recovery program for
31 alcohol or substance abuse or other addiction or for mental health
32 problems.

33 (10) Satisfy other conditions reasonably related to the purposes of
34 post-release punishment as set forth in G.S. 15A-1370.2.

35 (e) At the time when the court sentences a defendant to a term of imprisonment
36 that includes a term of post-release punishment, the court, in the sentencing judgment:

37 (1) Shall impose all the mandatory conditions of release that are specified
38 in subsection (b) of this section, and, where applicable, subsection (c)
39 of this section; and

40 (2) As to the discretionary conditions in subsection (d) of this section:

41 a. May impose one or more of those conditions itself;

42 b. May impose one or more of those conditions itself and delegate
43 to the Department the authority to delete, modify, or add to

1 those conditions when it releases the offender from
2 imprisonment to begin a term of post-release punishment;

- 3 c. May impose none of those conditions itself and delegate to the
4 Department the entire authority to determine all discretionary
5 conditions of release at the time it releases the offender from
6 imprisonment to begin a term of post-release punishment,
7 provided that delegation pursuant to this sub-subdivision shall
8 be presumed if the judgment does not provide otherwise.

9 (f) Discretionary conditions that are imposed by the court in a sentencing
10 judgment may be modified, without a charge or finding of violation, as follows:

- 11 (1) By the court, in its discretion, on its own motion and after providing
12 the offender an opportunity to be heard, at the time when the court
13 revokes a sentence of intermediate punishment and activates a
14 sentence of active punishment; and

- 15 (2) By the court at any other time, as follows:

- 16 a. A motion to modify discretionary conditions of release may be
17 filed by the Department, by the offender, or by a prosecuting
18 attorney of the district in which the offender is supervised.
19 b. Before the offender is released from imprisonment, the
20 Department shall file a motion for all modifications necessary
21 to implement the plan developed pursuant to G.S. 15A-1370.5.
22 c. The prosecuting attorney may file a motion to modify either on
23 the attorney's initiative or at the request of a victim entitled to
24 notice under G.S. 15A-837.
25 d. A copy of the motion shall be served on all the other parties
26 identified in sub-subdivision a. of this subdivision.
27 e. After reasonable notice to all parties and an opportunity for
28 them to be heard, the court may make any modification that is
29 necessary or appropriate to fulfill the purposes of post-release
30 punishment stated in G.S. 15A-1370.2.

31 (g) When necessary or appropriate to achieve the purposes of post-release
32 punishment set forth in G.S. 15A-1370.2, the Department may, upon reasonable notice
33 to the offender, establish or modify discretionary conditions as to which it has been
34 delegated that authority in a sentencing judgment.

35 (h) Prohibited Conditions. – The court or Department shall not impose
36 community service as a condition of post-release supervision.

37 (i) Required Supervision Fee. – The Department shall require as a condition of
38 post-release supervision that the offender pay a supervision fee of thirty dollars (\$30.00)
39 per month. The Department may exempt an offender from this condition only if it finds
40 that requiring payment of the fee is an undue economic burden. The fee shall be paid to
41 the clerk of superior court of the county in which the offender is supervised. The clerk
42 shall transmit any money collected pursuant to this subsection to the State Treasurer to
43 be deposited in the General Fund. In no event shall an offender be required to pay more
44 than one supervision fee per month.

"§ 15A-1370.7. Release under post-release supervision.

(a) Immediately at the commencement of the last nine months of an offender's term of imprisonment, as determined under G.S. 15A-1340.13(d1), the Department shall release the offender to begin serving the term of post-release punishment, place the offender under post-release supervision, determine the level of the offender's supervision, and specify the judicial district and county in which the offender is to reside and be supervised. If the offender is imprisoned in a local confinement facility, the administrator of the facility shall so release the offender.

(b) Before releasing an offender under post-release supervision, the Department shall give the offender a copy of the plan developed pursuant to G.S. 15A-1370.5 and a written statement of all the conditions of the offender's release.

(c) An offender may not refuse release to serve the term of post-release punishment.

(d) An offender shall not receive earned time credit against the period of imprisonment following revocation of post-release supervision for the time spent under post-release supervision.

(e) The duration of an offender's period of post-release supervision, as specified under G.S. 15A-1340.13(d1)(3), shall not be reduced for any reason.

(f) When an offender completes a term of post-release punishment:

(1) The sentence or sentences under which the offender was sentenced are terminated; and

(2) The offender's citizenship is restored as provided in Chapter 13 of the General Statutes.

(g) A period during which an offender is released from imprisonment to serve the term of post-release punishment runs concurrently with any federal or State prison, jail, probation, or parole terms to which the prisoner is subject during the period, but only if the jurisdiction that sentenced the prisoner to prison, jail, probation, or parole permits concurrent crediting of supervision time.

"§ 15A-1370.8. Response to violations; court proceedings.

(a) Whenever the Department has evidence that an offender has violated one or more of the conditions of the offender's release under post-release supervision, the Department may:

(1) Without filing a violation report, respond as provided elsewhere in this Article; or

(2) File a violation report with the court, in which case this section shall apply.

(b) Violation Reports. – The following provisions apply to violation reports:

(1) Each violation report shall specify the date and place of each violation and describe with reasonable particularity the nature of each violation.

(2) The report shall be filed in the district and county in which the offender is being supervised.

(3) Upon filing a violation report, the Department shall notify the district attorney of the prosecutorial district in which the report is filed.

(c) Hearing Date. – Promptly after a violation report is filed:

- 1 (1) The district attorney or the court shall schedule a date for a hearing on
2 the charges.
- 3 (2) The hearing shall be held in the superior court division. If there is no
4 scheduled session of the superior court within 45 days after the
5 violation report was filed for the county in which the offender is being
6 supervised, the hearing shall be held in the district court division.
- 7 (3) The hearing shall be scheduled for the earliest practical date after the
8 report was filed, and in any event not more than 45 days after the
9 report was filed.
- 10 (4) The offender shall be given prompt notice of the date, time, and place
11 of the hearing.
- 12 (d) Arrest of Offender. – After a violation report is filed:
- 13 (1) The offender may be arrested by a post-release supervision officer or
14 by a law enforcement officer upon either an order for arrest issued
15 pursuant to G.S. 15A-305 or pursuant to a written request contained in
16 the violation report.
- 17 (2) A copy of the violation report shall be served on the offender at the
18 time the offender is arrested.
- 19 (3) When the offender is arrested by a post-release supervision officer, or
20 by a law enforcement officer in the county in which the violation
21 report was filed, the offender shall be taken without unnecessary delay
22 before a judicial official of that county, for determination of conditions
23 of prehearing release pursuant to subsection (e) of this section.
- 24 (4) When the offender is arrested by a law enforcement officer in any
25 other county, the Department shall immediately assume custody of the
26 offender and take the offender without unnecessary delay before a
27 judicial official of the county in which the violation report was filed,
28 for determination of the conditions of prehearing release pursuant to
29 subsection (e) of this section. The arresting officer or the sheriff of the
30 county of arrest may temporarily detain the offender until the
31 Department assumes custody.
- 32 (e) Conditions of Release. – Conditions of prehearing release shall be determined
33 as follows:
- 34 (1) Except as provided in subdivision (4) of this subsection, the judicial
35 official shall impose one or both of the following conditions of
36 prehearing release and order that the offender be released when those
37 conditions are satisfied:
- 38 a. Require the execution of a secured appearance bond in a
39 specified amount and determine whether the bond shall be
40 secured by a deposit of the offender's own cash in the full
41 amount of the bond, or by one or more solvent sureties.
- 42 b. Impose any other condition or conditions reasonably necessary
43 to assure the offender's appearance at the final hearing and the
44 offender's compliance with all the mandatory conditions of the

- 1 offender's release from imprisonment to serve the term of
2 post-release punishment.
- 3 (2) If the judicial official requires that the bond be secured by a deposit of
4 the offender's own cash, the judicial official may also require that the
5 cash deposit may be made only by:
- 6 a. United States currency; or
7 b. A certified check or the equivalent.
- 8 (3) If the judicial official requires that the bond be secured by one or more
9 solvent sureties, the provisions of G.S. 15A-537 apply.
- 10 (4) If the judicial official determines that no conditions are likely to assure
11 the offender's appearance at the final hearing and the offender's
12 compliance with all mandatory conditions of the offender's release
13 under the term of post-release punishment, the judicial official shall
14 order that the offender remain in custody without bail pending the final
15 hearing.
- 16 (f) Preliminary Hearing. – A preliminary hearing on the violation report shall be
17 conducted as follows:
- 18 (1) The hearing shall be held within seven working days after the date
19 upon which the offender is arrested unless:
- 20 a. The offender waives the preliminary hearing;
21 b. The offender requests a continuance of the preliminary hearing;
22 or
23 c. A final hearing on the violation report is held before or instead
24 of the preliminary hearing.
- 25 (2) The preliminary hearing shall be held before a judge of the district
26 court division.
- 27 (3) At the preliminary hearing, the court:
- 28 a. Shall determine whether there is probable cause to believe that
29 the offender violated a condition of post-release supervision,
30 and
31 b. May review the conditions of the offender's prehearing release.
- 32 (4) If the court finds probable cause, the court shall:
- 33 a. Inform the offender of the offender's right to be represented by
34 an attorney at the final hearing, and
35 b. If the offender is indigent and requests counsel, appoint an
36 attorney to represent the offender.
- 37 (5) If the court does not find probable cause:
- 38 a. The offender shall be released from custody to continue serving
39 the offender's term of post-release punishment under all
40 currently applicable conditions of that release; and
41 b. Each day spent in custody pending the preliminary hearing shall
42 be considered a day spent serving the term of post-release
43 supervision.
- 44 (g) A final hearing on the violation charges shall be conducted as follows:

- 1 (1) The hearing shall be held on the date specified in the notice of hearing
2 unless the court continues the hearing to a date certain upon finding
3 that:
- 4 a. There is good cause for the continuance; and
5 b. The continuance is consistent with the purposes of post-release
6 punishment stated in G.S. 15A-1370.2.
- 7 (2) At the hearing:
- 8 a. Evidence against the offender shall be disclosed to the offender.
9 b. The offender may appear, address the court, present relevant
10 information, and confront and cross-examine adverse witnesses
11 unless the court finds good cause for not allowing
12 confrontation.
- 13 c. The offender is entitled to be represented by counsel at the
14 hearing and, if indigent, to have counsel appointed.
- 15 d. Formal rules of evidence do not apply at the hearing, but the
16 record or recollection of evidence or of testimony introduced at
17 the preliminary hearing are inadmissible as evidence.
- 18 (3) If, after the hearing, the court finds by a preponderance of the evidence
19 that the offender has violated one or more of the conditions of the
20 offender's release under post-release supervision:
- 21 a. The court may revoke the offender's release from imprisonment
22 and the unserved portion of the offender's term of post-release
23 punishment, and shall activate the suspended portion of the
24 offender's term of imprisonment if the court finds that:
- 25 1. The offender has violated any mandatory condition of
26 the offender's release; or
- 27 2. The offender has violated two or more court or
28 Department imposed discretionary conditions of the
29 offender's release; or
- 30 3. A court has, after a previous hearing on a violation
31 charge, found that the offender violated any
32 discretionary condition of the offender's release.
- 33 b. The court may, if it finds that the offender has violated only one
34 discretionary condition of the offender's release and that this is
35 the offender's first violation:
- 36 1. Revoke the offender's release from imprisonment and the
37 unserved portion of the offender's term of post-release
38 punishment and activate the suspended portion of the
39 offender's term of imprisonment, but only if it also finds
40 that revocation is necessary to further the purposes of
41 post-release punishment as stated in G.S. 15A-1370.2; or
42 2. Continue the offender on release under post-release
43 supervision, and make any modifications of the
44 conditions of the offender's release that it determines are

1 appropriate to further the purposes of post-release
2 punishment.

3 (4) If, after the hearing, the court does not find by a preponderance of the
4 evidence that the offender has violated one or more of the conditions
5 of the offender's release under post-release supervision:

6 a. The offender shall be released from custody to continue serving
7 the offender's term of post-release punishment;

8 b. The court may make any modifications of the existing
9 conditions of the offender's release that it determines are
10 appropriate to further purposes of post-release punishment
11 stated in G.S. 15A-1370.2; and

12 c. Each day spent in custody pending the final hearing shall be
13 considered a day spent serving the term of post-release
14 supervision.

15 (h) Timing of Revocation. – The court may revoke an offender's release under
16 post-release punishment for violation of a condition of the offender's release at either of
17 the following times:

18 (1) While the offender is on release from imprisonment to serve the term
19 of post-release punishment;

20 (2) After the expiration of the offender's term of post-release punishment
21 if, before the expiration of the offender's term of post-release
22 punishment, the Department has filed a violation report, and an order
23 for the offender's arrest has been issued pursuant to this subsection.

24 (i) The offender may at anytime waive hearing and consent to the revocation of
25 the offender's release under post-release supervision and to the activation of the
26 suspended portion of the offender's sentence of imprisonment.

27 (j) There shall be no appeal from an order revoking an offender's release under
28 post-release punishment and activating the suspended portion of the offender's term of
29 imprisonment.

30 (k) The Administrative Officer of the Courts shall prescribe rules for
31 record-keeping procedures under this section. The rules shall provide that upon the
32 completion of all proceedings under this section, the record of the proceedings shall be
33 transferred to the county in which the offender was originally convicted and shall be
34 filed with the records of the case or cases in which the conviction was recorded.

35 **§ 15A-1370.9. Recommitment.**

36 (a) This section shall apply whenever the court revokes an offender's term of
37 post-release supervision and activates the suspended portion of the offender's term of
38 imprisonment.

39 (b) The offender shall immediately be returned to the custody of the Department
40 to begin serving the suspended portion of the offender's term of imprisonment.

41 (c) The offender shall be given credit for all time spent in custody following
42 arrest on the violation charge for which post-release supervision was revoked and the
43 remainder of the offender's sentence activated.

1 (d) The offender shall not receive any credit against the term of imprisonment for
2 days spent on post-release supervision, but the offender may be awarded earned time
3 credit while serving the balance of the offender's term of imprisonment.

4 (e) The offender shall serve the entire remainder of the offender's term of
5 imprisonment, as reduced pursuant to subsections (c) and (d) of this section.

6 (f) The offender shall not again be eligible for release under post-release
7 punishment.

8 (g) When the offender completes serving the remainder of the offender's term of
9 imprisonment:

10 (1) The sentence or sentences under which the offender was sentenced are
11 terminated; and

12 (2) The offender's citizenship is restored as provided in Chapter 13 of the
13 General Statutes."

14 **SECTION 9.** G.S. 15A-305(b) reads as rewritten:

15 "(b) When Issued. – An order for arrest may be issued when:

16 (1) A grand jury has returned a true bill of indictment against a defendant
17 who is not in custody and who has not been released from custody
18 pursuant to Article 26 of this Chapter, Bail, to answer to the charges in
19 the bill of indictment.

20 (2) A defendant who has been arrested and released from custody pursuant
21 to Article 26 of this Chapter, Bail, fails to appear as required.

22 (3) The defendant has failed to appear as required by a duly executed
23 criminal summons issued pursuant to G.S. 15A-303 or a citation issued
24 by a law enforcement officer or other person authorized by statute
25 pursuant to G.S. 15A-302 that charged the defendant with a
26 misdemeanor.

27 (4) A defendant has violated the conditions of ~~probation~~ probation or the
28 conditions of release from imprisonment under Article 84B of this
29 Chapter.

30 (5) In any criminal proceeding in which the defendant has become subject
31 to the jurisdiction of the court, it becomes necessary to take the
32 defendant into custody.

33 (6) It is authorized by G.S. 15A-803 in connection with material witness
34 proceedings.

35 (7) The common-law writ of *capias* has heretofore been issuable.

36 (8) When a defendant fails to appear as required in a show cause order
37 issued in a criminal proceeding.

38 (9) It is authorized by G.S. 5A-16 in connection with contempt
39 proceedings."

40 **SECTION 10.** G.S. 143B-266 reads as rewritten:

41 "~~§ 143B-266. Post-Release Supervision and Parole Commission – creation, powers~~
42 ~~and duties.~~

43 (a) There is hereby created a ~~Post-Release Supervision and Parole Commission~~
44 of the Department of Correction with the authority to grant paroles, including both

1 regular and temporary paroles, to persons held by virtue of any final order or judgment
2 of any court of this State as provided in Chapter 148 of the General Statutes and laws of
3 the State of North Carolina, except that persons sentenced under Article 81B of Chapter
4 15A of the General Statutes are not eligible for parole. The Commission shall also have
5 authority to revoke, terminate, and suspend paroles of such persons (including persons
6 placed on parole on or before the effective date of the Executive Organization Act of
7 1973) and to assist the Governor in exercising his authority in granting reprieves,
8 commutations, and pardons, and shall perform such other services as may be required
9 by the Governor in exercising his powers of executive clemency. The Commission shall
10 also have authority to revoke and terminate persons on post-release supervision, as
11 provided in Article 84A of Chapter 15A of the General Statutes.

12 (b) All releasing authority previously resting in the Commissioner and
13 Commission of Correction with the exception of authority for extension of the limits of
14 the place of confinement of a prisoner contained in G.S. 148-4 is hereby transferred to
15 the ~~Post-Release Supervision and~~ Parole Commission. Specifically, such releasing
16 authority includes work release (G.S. 148-33.1), indeterminate-sentence release
17 (G.S. 148-42), and release of youthful offenders (G.S. 148-49.8), provided the
18 individual considered for work release or indeterminate-sentence release shall have been
19 recommended for release by the Secretary of Correction or his designee.

20 (c) The Commission is authorized and empowered to adopt such rules and
21 regulations, not inconsistent with the laws of this State, in accordance with which
22 prisoners eligible for parole consideration may have their cases reviewed and
23 investigated and by which such proceedings may be initiated and considered. All rules
24 and regulations heretofore adopted by the Board of Paroles shall remain in full force and
25 effect unless and until repealed or superseded by action of the ~~Post-Release Supervision~~
26 ~~and~~ Parole Commission. All rules and regulations adopted by the Commission shall be
27 enforced by the Department of Correction.

28 (d) The Commission is authorized and empowered to impose as a condition of
29 parole or post-release supervision that restitution or reparation be made by the prisoner
30 in accordance with the provisions of G.S. 148-57.1. The Commission is further
31 authorized and empowered to make restitution or reparation a condition of work release
32 in accordance with the provisions of G.S. 148-33.2.

33 (e) For prisoners to whom Article 84B of Chapter 15A of the General Statutes
34 applies, the powers and duties of the Commission under this Part shall be exercised by
35 the Department of Correction."

36 **SECTION 11.** G.S. 148-57.1 is amended by adding a new subsection to
37 read:

38 "(e) For prisoners to whom Article 84B of Chapter 15A of the General Statutes
39 applies, the powers and duties of the Commission under this Part shall be exercised by
40 the Department of Correction."

41 **SECTION 12.** The Revisor of Statutes shall change all references to the
42 "Post-Release Supervision and Parole Commission" in the General Statutes to the
43 "Parole Commission".

1 **SECTION 13.** This act becomes effective April 1, 2006, and applies only to
2 offenses committed on or after that date. Prosecutions for, or sentences based upon,
3 offenses occurring before the effective date of this act are not abated or affected by the
4 repeal or amendment in this act of any statute, and the statutes that would be applicable
5 to those prosecutions or sentences but for the provisions of this act remain applicable to
6 those prosecutions or sentences.