

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
Fourth Edition Engrossed 6/2/11

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



1 confinement provided for in this subdivision may only be imposed as
2 two-day or three-day consecutive periods.

3 (5) Substance abuse assessment, monitoring, or treatment.

4 (6) Participation in an educational or vocational skills development program,
5 including an evidence-based program.

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

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

10 "(e) Delegation to Probation Officer in Community Punishment. – 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 community punishment ~~to~~ to do any of the following:

14 (1) Perform up to 20 hours of community service, and pay the fee prescribed by
15 law for this ~~supervision;~~supervision.

16 (2) Report to the offender's probation officer on a frequency to be determined by
17 the ~~officer;~~ officer.

18 (3) Submit to substance abuse assessment, monitoring or treatment.

19 (4) Submit to house arrest with electronic monitoring.

20 (5) Submit to a period or periods of confinement in a local confinement facility
21 for a total of no more than six days per month during any three separate
22 months during the period of probation. The six days per month confinement
23 provided for in this subdivision may only be imposed as two-day or
24 three-day consecutive periods.

25 (6) Submit to a curfew which requires the offender to remain in a specified
26 place for a specified period each day and wear a device that permits the
27 offender's compliance with the condition to be monitored electronically.

28 (7) Participate in an educational or vocational skills development program,
29 including an evidence-based program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 **"§ 15A-1368.1. Applicability of Article 84A.**

43 This Article applies to all felons ~~in Class B1 through Class E~~ sentenced to an active
44 punishment under Article 81B of this Chapter, but does not apply to felons in Class A and
45 Class B1 sentenced to life imprisonment without parole. Prisoners subject to Articles 85 and
46 85A of this Chapter are excluded from this Article's coverage."
47

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

49 **"§ 15A-1368.2. Post-release supervision eligibility and procedure.**

50 (a) A prisoner to whom this Article applies shall be released from prison for
51 post-release supervision on the date equivalent to his maximum imposed prison term less ~~nine~~

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

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

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

14"

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

17 "(7a) Not to abscond, by willfully avoiding supervision or by willfully making the
 18 supervisee's whereabouts unknown to the supervising probation officer."

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

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

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

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

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

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

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

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

1	3-4	4-5	5-6	6-8	7-9	8-10	9-11	10-12
2	11-14	12-15	13-16	14-17	15-18	16-20	17-21	18-22
3	19-23	20-24	21-26	22-27	23-28	24-29	25-30	26-32
4	27-33	28-34	29-35	30-36	31-38	32-39	33-40	34-41
5	35-42	36-44	37-45	38-46	39-47	40-48	41-50	42-51
6	43-52	44-53	45-54	46-56	47-57	48-58	49-59	
7	<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>
8	<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>
9	<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>
10	<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>
11	<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>
12	<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.

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

1	<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>
2	<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>
3	<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>
4	<u>287-354</u>	<u>288-355</u>	<u>289-356</u>	<u>290-357</u>	<u>291-359</u>	<u>292-360</u>	<u>293-361</u>	<u>294-362</u>
5	<u>295-363</u>	<u>296-365</u>	<u>297-366</u>	<u>298-367</u>	<u>299-368</u>	<u>300-369</u>	<u>301-371</u>	<u>302-372</u>
6	<u>303-373</u>	<u>304-374</u>	<u>305-375</u>	<u>306-377</u>	<u>307-378</u>	<u>308-379</u>	<u>309-380</u>	<u>310-381</u>
7	<u>311-383</u>	<u>312-384</u>	<u>313-385</u>	<u>314-386</u>	<u>315-387</u>	<u>316-389</u>	<u>317-390</u>	<u>318-391</u>
8	<u>319-392</u>	<u>320-393</u>	<u>321-395</u>	<u>322-396</u>	<u>323-397</u>	<u>324-398</u>	<u>325-399</u>	<u>326-401</u>
9	<u>327-402</u>	<u>328-403</u>	<u>329-404</u>	<u>330-405</u>	<u>331-407</u>	<u>332-408</u>	<u>333-409</u>	<u>334-410</u>
10	<u>335-411</u>	<u>336-413</u>	<u>337-414</u>	<u>338-415</u>	<u>339-416</u>			
11	<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>
12	<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>
13	<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>
14	<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>
15	<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>
16	<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>
17	<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>
18	<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>
19	<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>
20	<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>
21	<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>
22	<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>
23	<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>
24	<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>
25	<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>
26	<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>
27	<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>
28	<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>
29	<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>
30	<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>
31	<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>
32	<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>
33	<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>
34	<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>
35	<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>
36	<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>
37	<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>
38	<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>
39	<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>
40	<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>
41	<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>
42	<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>
43	<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>
44	<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>
45	<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>
46	<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>
47	<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>
48	<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>
49	<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>
50	<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>
51	<u>335-414</u>	<u>336-416</u>	<u>337-417</u>	<u>338-418</u>	<u>339-419"</u>			

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

"(e1) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms of 340 Months or More. – Unless provided otherwise in a statute establishing a punishment for a specific crime, when the minimum sentence is 340 months or more, the corresponding maximum term of imprisonment shall be equal to the sum of the minimum term of imprisonment and twenty percent (20%) of the minimum term of imprisonment, rounded to the next highest month, plus ~~nine~~12 additional months."

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

PART III. STATUS OFFENSE OF HABITUAL BREAKING AND ENTERING

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

"Article 2D.

"Habitual Breaking and Entering Status Offense.

"§ 14-7.25. Definitions.

The following definitions apply in this Article:

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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 14-7.27. Punishment.

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

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

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

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

15 **"§ 14-7.29. Evidence of prior convictions of breaking and entering.**

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

25 **"§ 14-7.30. Verdict and judgment.**

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

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

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

40 **"§ 14-7.31. Sentencing of status offenders.**

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

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

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

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

2 "**§ 14-7.1. Persons defined as habitual felons.**

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

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

21 "**§ 14-7.3. Charge of habitual felon.**

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

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

36 "**§ 14-7.6. Sentencing of habitual felons.**

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

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

PART IV. LIMIT TIME/CERTAIN VIOLATIONS OF PROBATION

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

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

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

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

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

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

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

PART V. DIVERSION PROGRAM/FELONY DRUG POSSESSION

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

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

(a) Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal laws; (ii) any offense under this ~~Article~~ Article; or (iii) an offense under any statute of the United States or any state relating to those substances included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of Chapter ~~90~~90 of the General Statutes pleads guilty to or is found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules ~~H-I~~ through VI of this Article or by possessing drug paraphernalia as prohibited by G.S. 90 113.22, or (ii) a felony under ~~G.S. 90-95(a)(3), G.S. 90-95(a)(3) by possessing less than one gram of cocaine,~~ the court ~~may, shall,~~ without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A 1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the

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

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

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

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

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

38 For the purposes of determining whether the conviction is a first conviction or whether a
39 person has already had discharge and dismissal, no prior offense occurring more than seven
40 years before the date of the current offense shall be considered. In addition, convictions for
41 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
42 90-113.11, or 90-113.12, or 90-113.22 shall be considered previous convictions.

43 Failure to complete successfully an approved program of instruction at a drug education
44 school shall constitute grounds to revoke probation pursuant to this subsection and deny
45 application for expunction of all recordation of defendant's arrest, indictment, or information,
46 trial, finding of guilty, and dismissal and discharge pursuant to G.S. 15A-145.2. For purposes
47 of this subsection, the phrase "failure to complete successfully the prescribed program of
48 instruction at a drug education school" includes failure to attend scheduled classes without a
49 valid excuse, failure to complete the course within 150 days of imposition of probation, willful
50 failure to pay the required fee for the course as provided in G.S. 90-96.01(b), or any other
51 manner in which the person fails to complete the course successfully. The instructor of the

1 course to which a person is assigned shall report any failure of a person to complete
2 successfully the program of instruction to the court which imposed probation. Upon receipt of
3 the instructor's report that the person failed to complete the program successfully, the court
4 shall revoke probation, shall not discharge such person, shall not dismiss the proceedings
5 against the person, and shall deny application for expunction of all recordation of defendant's
6 arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant
7 to G.S. 15A-145.2. A person may obtain a hearing before the court of original jurisdiction prior
8 to revocation of probation or denial of application for expunction.

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

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

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

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

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

34"

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

36 "**§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the**
37 **time of the offense of certain drug offenses.**

38 ...

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

1 of the person's failures to recite or acknowledge such arrest, or indictment or information, or
2 trial in response to any inquiry made of him or her for any purpose.

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

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

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

1 such arrest, or indictment or information, or conviction, or trial in response to any inquiry made
2 of him or her for any purpose. The judge may waive the condition that the petitioner attend the
3 drug education school if the judge makes a specific finding that there was no drug education
4 school within a reasonable distance of the defendant's residence or that there were specific
5 extenuating circumstances which made it likely that the petitioner would not benefit from the
6 program of instruction.

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

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

14 **"§ 15A-1340.18. Advanced supervised release.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 (g) A defendant released on the ASR date is subject to post-release supervision under
48 this Article. Notwithstanding the provisions in G.S. 15A-1368.3(c), if the defendant has been
49 returned to prison for three, three-month periods of confinement, a subsequent violation shall
50 result in the defendant returning to prison to serve the time remaining on the maximum

1 imposed term, and is ineligible for further post-release supervision regardless of the amount of
2 time remaining to be served.

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

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

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

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

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

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

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

21 "Article 6B.

22 "Treatment for Effective Community Supervision Program.

23 **"§ 143B-274.1. Short title.**

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

26 **"§ 143B-274.2. Legislative policy.**

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

30 **"§ 143B-274.3. Definitions.**

31 The following definitions apply in this Article:

32 (1) Certified and licensed. – North Carolina Substance Abuse Professional
33 Practice Board certified or licensed substance abuse professionals or
34 Department of Health and Human Services licensed agencies.

35 (2) Department. – The Department of Correction.

36 (3) Division. – The Department of Correction, Division of Community
37 Corrections.

38 (4) Eligible entity. – A local or regional government, a nongovernmental entity,
39 or collaborative partnership that demonstrates capacity to provide services
40 that address the criminogenic needs of offenders.

41 (5) Program. – A community-based corrections program.

42 (6) Secretary. – The Secretary of the Department of Correction.

43 (7) State Board. – The State Community Corrections Advisory Board.

44 **"§ 143B-274.4. Goals of community-based corrections programs funded under this** 45 **Article.**

46 The goals of community-based programs funded under this Article are to reduce recidivism
47 and to reduce the rate of probation and post-release supervision revocations from the rate in the
48 2009-2010 fiscal year.

49 **"§ 143B-274.5. Eligible population.**

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

4 (1) Received a nonincarcerative sentence of a community punishment.

5 (2) Received a nonincarcerative sentence of an intermediate punishment.

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

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

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

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

14 **"§ 143B-274.6. Duties of Department of Correction.**

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

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

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

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

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

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

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

32 (1) Articulates a goal of reducing revocations among people on probation and
33 post-release supervision by twenty percent (20%) from the rate in the
34 2009-2010 fiscal year.

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

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

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

47 (c) The Department of Correction shall report by March 1 of each year to the Chairs of
48 the Senate and House of Representatives Appropriations Committees, the Senate and House of
49 Representatives Appropriations Subcommittees on Justice and Public Safety, and the Joint
50 Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the status

1 of the Treatment for Effective Community Supervision Program. The report shall include the
2 following information:

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

20 **§ 143B-274.7. Contract for services.**

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

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

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

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

32 **§ 143B-274.8. State Community Corrections Advisory Board.**

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

- 36 (1) A member of the Senate.
- 37 (2) A member of the House of Representatives.
- 38 (3) A judge of the superior court.
- 39 (4) A judge of the district court.
- 40 (5) A district attorney.
- 41 (6) A criminal defense attorney.
- 42 (7) A county sheriff.
- 43 (8) A chief of a city police department.
- 44 (9) Two county commissioners, one from a predominantly urban county and one
45 from a predominantly rural county.
- 46 (10) A representative of an existing community-based corrections program.
- 47 (11) A member of the public who has been the victim of a crime.
- 48 (12) Two rehabilitated ex-offenders.
- 49 (13) A member of the business community.

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

4 (15) A victim service provider.

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

7 (17) A clerk of superior court.

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

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

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

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

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

24 (5) The Speaker of the House of Representatives shall appoint the following
25 members: the member of the House of Representatives, the county
26 commissioner from a predominantly rural county, and one member of the
27 general public.

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

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

40 (d) At the end of their respective terms of office their successors shall be appointed for terms of
41 three years. A vacancy occurring before the expiration of the term of office shall be filled in the
42 same manner as original appointments for the remainder of the term. Members may be
43 reappointed without limitation.

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

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

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

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

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

12 **"§ 143B-274.9. State Community Corrections Advisory Board; powers and duties.**

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

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

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

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

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

21 **"§ 143B-274.10. North Carolina Sentencing and Policy Advisory Commission report.**

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

26 **"§ 143B-274.11. Program types eligible for funding; community-based corrections**
27 **programs.**

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

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

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

36 **SECTION 6.(c)** This section becomes effective July 1, 2011. The Department of
37 Correction may enter into contracts under this section with current program providers in the
38 Criminal Justice Partnership Program on a sole-source basis during the 2011-2012 fiscal year.
39

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

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

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

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

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

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

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

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

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

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

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

2 "(b1) The Statewide Misdemeanor Confinement Program is established. The Program
3 shall provide for the housing of misdemeanants from all counties serving sentences imposed for
4 a period of more than 90 days and up to 180 days, except for those serving sentences for an
5 impaired driving offense under G.S. 20-138.1. Those misdemeanants shall be confined in local
6 confinement facilities except as provided in subsections (b2) and (b3) of this section. The
7 Program shall address methods for the placement and transportation of inmates and
8 reimbursement to counties for the housing of those inmates. Any county that voluntarily agrees
9 to house misdemeanants from that county or from other counties pursuant to the Program may
10 enter into a written agreement with the Department of Correction to do so.

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

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

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

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

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

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

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

50 Upon receiving such request and certification in writing, any superior or district court judge
51 for the district in which the local confinement facility is located may, after ascertaining that the

1 request meets the criteria set forth in subdivision (1), (2), or (3) of this subsection, order the
2 misdemeanant transferred to a unit of the State prison system designated by the Secretary of
3 Correction or the Secretary's authorized representative. The Department of Correction shall be
4 reimbursed from the Statewide Misdemeanor Confinement Fund for the costs of housing the
5 misdemeanant, including the care, supervision, and transportation of the misdemeanant.

6 (b3) A misdemeanant housed under the Statewide Misdemeanor Confinement Program
7 established pursuant to subsection (b1) of this section may be transferred to a facility operated
8 by the Department of Correction if the North Carolina Sheriffs' Association determines that the
9 local confinement facilities available for housing misdemeanants under the Program are filled
10 to capacity. The Department of Correction shall be reimbursed from the Statewide
11 Misdemeanor Confinement Fund for the costs of housing the misdemeanant, including the care,
12 supervision, and transportation of the misdemeanant."

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

15 **"§ 148-10.4. Statewide Misdemeanor Confinement Fund.**

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

17 (1) Department. – Department of Correction.

18 (2) Fund. – The Statewide Misdemeanor Confinement Fund established by this
19 section.

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

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

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

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

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

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

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

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

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

42 (e) Operating and Administrative Expenses. – Ten percent (10%) of the monthly
43 receipts collected and credited to the Statewide Misdemeanor Confinement Fund shall be
44 transferred on a monthly basis to the Sheriffs' Association to be used to support the Program
45 and for administrative and operating expenses of the Association and its staff. One percent
46 (1%) of the monthly receipts collected and credited to the Statewide Misdemeanor
47 Confinement Fund shall be transferred on a monthly basis to the General Fund to be allocated
48 to the Department of Correction for its administrative and operating expenses for the Program."

49 **SECTION 7.(i)** The North Carolina Sheriffs' Association shall report to the Joint
50 Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by October
51 1, 2011, on the implementation of this Part, and shall report thereafter as requested by the

1 Committee. The report shall include relevant information collected monthly by the Sheriffs'
2 Association regarding the jail capacity and population in each county.

3 **SECTION 7.(j)** The General Assembly finds that while the Program developed
4 pursuant to G.S. 148-32.1(b1) as enacted by subsection (e) of this section shall be available
5 statewide on January 1, 2012, it may be available to some counties at an earlier date.
6 Therefore, notwithstanding any other provision of law, a misdemeanor, who has a sentence
7 imposed of more than 90 days and up to 180 days prior to January 1, 2012, excluding those
8 serving sentences for an impaired driving offense under G.S. 20-138.1, may be transferred or
9 reassigned to a local confinement facility designated by the Sheriffs' Association as provided
10 by the Program developed pursuant to G.S. 148-32.1(b1).

11 **SECTION 7.(k)** Of the funds appropriated to the Department of Correction for the
12 2011-2012 fiscal year, the Department shall transfer the sum of three hundred thousand dollars
13 (\$300,000) to the North Carolina Sheriffs' Association for expenses related to initiating the
14 provisions of this Part.

15 **SECTION 7.(l)** If there is not adequate capacity in the Statewide Misdemeanor
16 Confinement program, such that the Department of Correction must continue to house
17 prisoners serving more than 90 and up to 180 days pursuant to G.S. 148-32.1(b3), then the
18 Department of Correction is authorized to use funds received from the Statewide Misdemeanor
19 Confinement Fund to operate facilities previously identified for closure and for diagnostic staff
20 positions.

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

25 26 **PART VIII. ANNUAL REPORT**

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

29 **"§ 164-50. Annual report on implementation of Justice Reinvestment Project.**

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

37 38 **PART IX. TITLE**

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

40 41 **PART X. EFFECTIVE DATE**

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