

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 642
Committee Substitute Favorable 4/14/11
Committee Substitute #2 Favorable 5/31/11
Fourth Edition Engrossed 6/2/11
Senate Judiciary I Committee Substitute Adopted 6/9/11
Corrected Copy 6/13/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H642-PCS70259-LH-8

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, or
11 special probation as defined in G.S. 15A-1351(a). ~~punishment, an~~
12 ~~intermediate punishment, or any of the conditions of probation listed in~~
13 ~~subdivision (6) of this section.~~ It may include any one or more of the
14 conditions set forth in G.S. 15A-1343(a1)."

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

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

21 a. ~~Special probation as defined in G.S. 15A-1351(a).~~

22 b. ~~Assignment to a residential program.~~

23 c. ~~House arrest with electronic monitoring.~~

24 d. ~~Intensive supervision.~~

25 e. ~~Assignment to a day-reporting center.~~

26 f. ~~Assignment to a drug treatment court program."~~

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



* H 6 4 2 - P C S 7 0 2 5 9 - L H - 8 *

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

- 4 (1) House arrest with electronic monitoring.
5 (2) Perform community service.
6 (3) Submission to a period or periods of confinement in a local confinement
7 facility for a total of no more than six days per month during any three
8 separate months during the period of probation. The six days per month
9 confinement provided for in this subdivision may only be imposed as
10 two-day or three-day consecutive periods.
11 (4) Substance abuse assessment, monitoring, or treatment.
12 (5) Participation in an educational or vocational skills development program,
13 including an evidence-based program.
14 (6) Submission to satellite-based monitoring, pursuant to Part 5 of Article 27A
15 of Chapter 14 of the General Statutes, if the defendant is described by
16 G.S. 14-208.40(a)(2)."

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

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

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

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

40 The probation officer may exercise authority delegated to him or her by the court pursuant
41 to subsection (e) of this section after administrative review and approval by a Chief Probation
42 Officer. The offender may file a motion with the court to review the action taken by the
43 probation officer. The offender shall be given notice of the right to seek such a court review.
44 However, the offender shall have no right of review if he or she has signed a written waiver of
45 rights as required by this subsection. The Division may exercise any authority delegated to it
46 under this subsection only if it first determines that the offender has failed to comply with one
47 or more of the conditions of probation imposed by the court or the offender is determined to be
48 high risk based on the results of the risk assessment in G.S. 15A-1343.2, except that the
49 condition at subdivision (5) of this subsection may not be imposed unless the Division
50 determines that the offender failed to comply with one or more of the conditions imposed by

1 the court. Nothing in this section shall be construed to limit the availability of the procedures
2 authorized under G.S. 15A-1345.

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

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

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

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

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

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

47 The probation officer may exercise authority delegated to him or her by the court pursuant
48 to subsection (f) of this section after administrative review and approval by a Chief Probation
49 Officer. The offender may file a motion with the court to review the action taken by the
50 probation officer. The offender shall be given notice of the right to seek such a court review.
51 However, the offender shall have no right of review if he or she has signed a written waiver of

1 rights as required by this subsection. The Division may exercise any authority delegated to it
2 under this subsection only if it first determines that the offender has failed to comply with one
3 or more of the conditions of probation imposed by the court or the offender is determined to be
4 high risk based on the results of the risk assessment in G.S. 15A-1343.2, except that the
5 condition at subdivision (6) of this subsection may not be imposed unless the Division
6 determines that the offender failed to comply with one or more of the conditions imposed by
7 the court. Nothing in this section shall be construed to limit the availability of the procedures
8 authorized under G.S. 15A-1345.

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

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

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

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

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

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

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

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

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

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

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

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

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

51 **"§ 15A-1368.1. Applicability of Article 84A.**

1 This Article applies to all felons in ~~Class B1 through Class E~~ sentenced to an active
2 punishment under Article 81B of this Chapter, but does not apply to felons in Class A and
3 Class B1 sentenced to life imprisonment without parole. Prisoners subject to Articles 85 and
4 85A of this Chapter are excluded from this Article's coverage."

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

6 "**§ 15A-1368.2. Post-release supervision eligibility and procedure.**

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

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

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

23"

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

26 "(7a) Not to abscond, by willfully avoiding supervision or by willfully making the
27 supervisee's whereabouts unknown to the supervising probation officer."

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

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

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

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

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

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

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

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

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

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

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

15-27	16-29	17-30	18-31	19-32	20-33	21-35	22-36
23-37	24-38	25-39	26-41	27-42	28-43	29-44	30-45
31-47	32-48	33-49	34-50	35-51	36-53	37-54	38-55
39-56	40-57	41-59	42-60	43-61	44-62	45-63	46-65
47-66	48-67	49-68	50-69	51-71	52-72	53-73	54-74
55-75	56-77	57-78	58-79	59-80	60-81	61-83	62-84
63-85	64-86	65-87	66-89	67-90	68-91	69-92	70-93
71-95	72-96	73-97	74-98	75-99	76-101	77-102	78-103
79-104	80-105	81-107	82-108	83-109	84-110	85-111	86-113
87-114	88-115	89-116	90-117	91-119	92-120	93-121	94-122
95-123	96-125	97-126	98-127	99-128	100-129	101-131	102-132
103-133	104-134	105-135	106-137	107-138	108-139	109-140	110-141
111-143	112-144	113-145	114-146	115-147	116-149	117-150	118-151
119-152	120-153	121-155	122-156	123-157	124-158	125-159	126-161
127-162	128-163	129-164	130-165	131-167	132-168	133-169	134-170
135-171	136-173	137-174	138-175	139-176	140-177	141-179	142-180
143-181	144-182	145-183	146-185	147-186	148-187	149-188	150-189
151-191	152-192	153-193	154-194	155-195	156-197	157-198	158-199
159-200	160-201	161-203	162-204	163-205	164-206	165-207	166-209
167-210	168-211	169-212	170-213	171-215	172-216	173-217	174-218
175-219	176-221	177-222	178-223	179-224	180-225	181-227	182-228

1	183-229	184-230	185-231	186-233	187-234	188-235	189-236	190-237
2	191-239	192-240	193-241	194-242	195-243	196-245	197-246	198-247
3	199-248	200-249	201-251	202-252	203-253	204-254	205-255	206-257
4	207-258	208-259	209-260	210-261	211-263	212-264	213-265	214-266
5	215-267	216-269	217-270	218-271	219-272	220-273	221-275	222-276
6	223-277	224-278	225-279	226-281	227-282	228-283	229-284	230-285
7	231-287	232-288	233-289	234-290	235-291	236-293	237-294	238-295
8	239-296	240-297	241-299	242-300	243-301	244-302	245-303	246-305
9	247-306	248-307	249-308	250-309	251-311	252-312	253-313	254-314
10	255-315	256-317	257-318	258-319	259-320	260-321	261-323	262-324
11	263-325	264-326	265-327	266-329	267-330	268-331	269-332	270-333
12	271-335	272-336	273-337	274-338	275-339	276-341	277-342	278-343
13	279-344	280-345	281-347	282-348	283-349	284-350	285-351	286-353
14	287-354	288-355	289-356	290-357	291-359	292-360	293-361	294-362
15	295-363	296-365	297-366	298-367	299-368	300-369	301-371	302-372
16	303-373	304-374	305-375	306-377	307-378	308-379	309-380	310-381
17	311-383	312-384	313-385	314-386	315-387	316-389	317-390	318-391
18	319-392	320-393	321-395	322-396	323-397	324-398	325-399	326-401
19	327-402	328-403	329-404	330-405	331-407	332-408	333-409	334-410
20	335-411	336-413	337-414	338-415	339-416			
21	<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>
22	<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>
23	<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>
24	<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>
25	<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>
26	<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>
27	<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>
28	<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>
29	<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>
30	<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>
31	<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>
32	<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>
33	<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>
34	<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>
35	<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>
36	<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>
37	<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>
38	<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>
39	<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>
40	<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>
41	<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>
42	<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>
43	<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>
44	<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>
45	<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>
46	<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>
47	<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>
48	<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>
49	<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>
50	<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>
51	<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>

1	<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>
2	<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>
3	<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>
4	<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>
5	<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>
6	<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>
7	<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>
8	<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>
9	<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>
10	<u>335-414</u>	<u>336-416</u>	<u>337-417</u>	<u>338-418</u>	<u>339-419</u> ".			

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

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

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

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

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

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

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

37 PART III. STATUS OFFENSE OF HABITUAL BREAKING AND ENTERING

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

40 "Article 2D.

41 "Habitual Breaking and Entering Status Offense.

42 "§ 14-7.25. Definitions.

43 The following definitions apply in this Article:

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

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

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

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

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

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

- 1 f. Any repealed or superseded offense substantially equivalent to any of
2 the offenses in sub-subdivision a., b., c., d., or e. of this subdivision.
3 g. Any offense committed in another jurisdiction substantially similar to
4 any of the offenses in sub-subdivision a., b., c., d., or e. of this
5 subdivision.

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

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

10 **"§ 14-7.26. Habitual breaking and entering status offender.**

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

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

21 **"§ 14-7.27. Punishment.**

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

25 **"§ 14-7.28. Charge of habitual breaking and entering status offender.**

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

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

40 **"§ 14-7.29. Evidence of prior convictions of breaking and entering.**

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

50 **"§ 14-7.30. Verdict and judgment.**

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

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

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

15 **"§ 14-7.31. Sentencing of status offenders.**

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

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

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

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

28 **"§ 14-7.1. Persons defined as habitual felons.**

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

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

47 **"§ 14-7.3. Charge of habitual felon.**

48 The district attorney, in his or her discretion, may charge a person as an habitual felon
49 pursuant to this Article. An indictment which charges a person who is an habitual felon within
50 the meaning of G.S. 14-7.1 with the commission of any felony under the laws of the State of
51 North Carolina must, in order to sustain a conviction of habitual felon, also charge that said

1 person is an habitual felon. The indictment charging the defendant as an habitual felon shall be
2 separate from the indictment charging him with the principal felony. An indictment which
3 charges a person with being an habitual felon must set forth the date that prior felony offenses
4 were committed, the name of the state or other sovereign against whom said felony offenses
5 were committed, the dates that pleas of guilty were entered to or convictions returned in said
6 felony offenses, and the identity of the court wherein said pleas or convictions took place. No
7 defendant charged with being an habitual felon in a bill of indictment shall be required to go to
8 trial on said charge within 20 days of the finding of a true bill by the grand jury; provided, the
9 defendant may waive this 20-day period."

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

11 "**§ 14-7.6. Sentencing of habitual felons.**

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

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

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

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

30 "(3a) Not to abscond, by willfully avoiding supervision or by willfully making the
31 defendant's whereabouts unknown to the supervising probation officer."

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

33 "(a) Authority to Alter or Revoke. – Except as provided in subsection (a1) or (b),
34 probation may be reduced, terminated, continued, extended, modified, or revoked by any judge
35 entitled to sit in the court which imposed probation and who is resident or presiding in the
36 district court district as defined in G.S. 7A-133 or superior court district or set of districts as
37 defined in G.S. 7A-41.1, as the case may be, where the sentence of probation was imposed,
38 where the probationer violates probation, or where the probationer resides. Upon a finding that
39 an offender sentenced to community punishment under Article 81B has violated one or more
40 conditions of probation, the court's authority to modify the probation judgment includes the
41 authority to require the offender to comply with conditions of probation that would otherwise
42 make the sentence an intermediate punishment. The court may only revoke probation for a
43 violation of a condition of probation under G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a),
44 except as provided in G.S. 15A-1344(d2). Imprisonment may be imposed pursuant to
45 G.S. 15A-1344(d2) for a violation of a requirement other than G.S. 15A-1343(b)(1) or
46 G.S. 15A-1343(b)(3a). The district attorney of the prosecutorial district as defined in
47 G.S. 7A-60 in which probation was imposed must be given reasonable notice of any hearing to
48 affect probation substantially."
49

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

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

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

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

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

15 **"§ 90-96. Conditional discharge for first offense.**

16 (a) Whenever any person who has not previously been convicted of (i) any felony
17 offense under any state or federal laws; (ii) any offense under this ~~Article~~ Article; or (iii) an
18 offense under any statute of the United States or any state relating to those substances included
19 in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of Chapter 90
20 of the General Statutes pleads guilty to or is found guilty of (i) a misdemeanor under this
21 Article by possessing a controlled substance included within Schedules ~~H-I~~ through VI of this
22 Article or by possessing drug paraphernalia as prohibited by G.S. 90 113.22, or (ii) a felony
23 under ~~G.S. 90-95(a)(3), G.S. 90 95(a)(3) by possessing less than one gram of cocaine,~~ the court
24 ~~may,~~ shall, without entering a judgment of guilt and with the consent of such person, defer
25 further proceedings and place him on probation upon such reasonable terms and conditions as it
26 may require. Notwithstanding the provisions of G.S. 15A 1342(c) or any other statute or law,
27 probation may be imposed under this section for an offense under this Article for which the
28 prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the
29 court may allow the defendant to participate in a drug education program approved for this
30 purpose by the Department of Health and Human ~~Services~~ Services or in the Treatment for
31 Effective Community Supervision Program under Article 6B of Chapter 143B of the General
32 Statutes. Upon violation of a term or condition, the court may enter an adjudication of guilt and
33 proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall
34 discharge such person and dismiss the proceedings against him. Discharge and dismissal under
35 this section shall be without court adjudication of guilt and shall not be deemed a conviction for
36 purposes of this section or for purposes of disqualifications or disabilities imposed by law upon
37 conviction of a crime including the additional penalties imposed for second or subsequent
38 convictions under this Article. Discharge and dismissal under this section or G.S. 90 113.14
39 may occur only once with respect to any person. Disposition of a case to determine discharge
40 and dismissal under this section at the district court division of the General Court of Justice
41 shall be final for the purpose of appeal. Prior to taking any action to discharge and dismiss
42 under this section the court shall make a finding that the defendant has no record of previous
43 convictions under the "North Carolina Controlled Substances Act", Article 5, Chapter 90, the
44 "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, or the "Drug Paraphernalia Act",
45 Article 5B, Chapter 90, as provided in this subsection.

46 (a1) Upon the first conviction only of any offense ~~included in G.S. 90 95(a)(3) or~~
47 ~~G.S. 90 113.22 and subject to the provisions of this subsection (a1), which qualifies under the~~
48 provisions of subsection (a) of this section, and the provisions of this subsection, the court may
49 place defendant on probation under this section for an offense under this Article including an
50 offense for which the prescribed punishment includes only a fine. The probation, if imposed,
51

1 shall be for not less than one year and shall contain a minimum condition that the defendant
2 who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of
3 the date of the imposition of said probation, the program of instruction at the drug education
4 school approved by the Department of Health and Human Services pursuant to G.S. 90 96.01.
5 The court may impose probation that does not contain a condition that defendant successfully
6 complete the program of instruction at a drug education school if:

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

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

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

16 For the purposes of determining whether the conviction is a first conviction or whether a
17 person has already had discharge and dismissal, no prior offense occurring more than seven
18 years before the date of the current offense shall be considered. In addition, convictions for
19 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
20 90-113.11, or 90-113.12, or 90-113.22 shall be considered previous convictions.

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

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

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

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

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

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

13"

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

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

17 ...

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

32 (c) Whenever any person who has not previously been convicted of (i) any felony
33 offense under any state or federal laws; (ii) any offense under Chapter 90 of the General
34 Statutes; or (iii) an offense under any statute of the United States or any state relating to
35 controlled substances included in any schedule of Chapter 90 of the General Statutes or to that
36 paraphernalia included in Article 5B of Chapter 90 of the General Statutes, pleads guilty to or
37 has been found guilty of (i) a misdemeanor under this Article by possessing a controlled
38 substance included within Schedules I through VI of Chapter 90, or by possessing drug
39 paraphernalia as prohibited by G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3),
40 ~~Whenever any person who has not previously been convicted of an offense under Article 5 of~~
41 ~~Chapter 90 of the General Statutes or under any statute of the United States or any state relating~~
42 ~~to controlled substances included in any schedule of Article 5 of Chapter 90 of the General~~
43 ~~Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes~~
44 ~~pleads guilty to or has been found guilty of (i) a misdemeanor under Article 5 of Chapter 90 of~~
45 ~~the General Statutes by possessing a controlled substance included within Schedules through~~
46 ~~VI of Article 5 of Chapter 90 of the General Statutes or by possessing drug paraphernalia as~~
47 ~~prohibited by G.S. 90-113.22 or (ii) a felony under the court may, upon application of the~~
48 person not sooner than 12 months after conviction, order cancellation of the judgment of
49 conviction and expunction of the records of the person's arrest, indictment or information, trial,
50 and conviction. A conviction in which the judgment of conviction has been canceled and the
51 records expunged pursuant to this subsection shall not be thereafter deemed a conviction for

1 purposes of this subsection or for purposes of disqualifications or liabilities imposed by law
2 upon conviction of a crime, including the additional penalties imposed for second or
3 subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and
4 expunction under this subsection may occur only once with respect to any person. Disposition
5 of a case under this subsection at the district court division of the General Court of Justice shall
6 be final for the purpose of appeal.

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

12 The judge to whom the petition is presented is authorized to call upon a probation officer
13 for additional investigation or verification of the petitioner's conduct since conviction. If the
14 court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of
15 Chapter 90 of the General Statutes for possessing a controlled substance included within
16 Schedules ~~H-I~~ through VI of Article 5 of Chapter 90 of the General Statutes or for possessing
17 drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under ~~G.S. 90-95(a)(3)~~ for
18 ~~possession of less than one gram of cocaine, G.S. 90-95(a)(3)~~, that the petitioner has no
19 disqualifying previous convictions as set forth in this subsection, that the petitioner was not
20 over 21 years of age at the time of the offense, that the petitioner has been of good behavior
21 since his or her conviction, that the petitioner has successfully completed a drug education
22 program approved for this purpose by the Department of Health and Human Services, and that
23 the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation
24 under the laws of this State at any time prior to or since the conviction for the offense in
25 question, it shall enter an order of expunction of the petitioner's court record. The effect of such
26 order shall be to restore the petitioner in the contemplation of the law to the status the petitioner
27 occupied before arrest or indictment or information or conviction. No person as to whom such
28 order was entered shall be held thereafter under any provision of any law to be guilty of perjury
29 or otherwise giving a false statement by reason of the person's failures to recite or acknowledge
30 such arrest, or indictment or information, or conviction, or trial in response to any inquiry made
31 of him or her for any purpose. The judge may waive the condition that the petitioner attend the
32 drug education school if the judge makes a specific finding that there was no drug education
33 school within a reasonable distance of the defendant's residence or that there were specific
34 extenuating circumstances which made it likely that the petitioner would not benefit from the
35 program of instruction.

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

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

43 **"§ 15A-1340.18. Advanced supervised release.**

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

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

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

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

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

- 1 c. Class F, Prior Record Level I-V.
2 d. Class G, Prior Record Level I-VI.
3 e. Class H, Prior Record Level I-VI.
4 (3) "Risk reduction incentive" is a sentencing condition which, upon successful
5 completion during incarceration, results in a prisoner being placed on ASR.
6 (b) The Department of Correction is authorized to create risk reduction incentives
7 consisting of treatment, education, and rehabilitative programs. The incentives shall be
8 designed to reduce the likelihood that the prisoner who receives the incentive will reoffend.
9 (c) The court, in its discretion and without objection from the prosecutor, may include a
10 risk reduction incentive or incentives in sentencing an eligible defendant to an active sentence.
11 (d) The court shall impose a sentence calculated pursuant to Article 81B of the General
12 Statutes. The ASR date shall be the shortest mitigated sentence for the offense at the offender's
13 prior record level. If the court utilizes the mitigated range in sentencing the defendant, then the
14 ASR date shall be eighty percent (80%) of the minimum sentence imposed.
15 (e) The defendant shall be notified at sentencing that if the defendant completes the risk
16 reduction incentives as identified by the Department, then he or she will be released on the
17 ASR date. If the Department determines that the defendant is unable to complete the incentives
18 by the ASR date, through no fault of the defendant, then the defendant shall be released at the
19 ASR date.
20 (f) Termination from the risk reduction incentive program shall result in the
21 nullification of the ASR date, and the defendant's release date shall be calculated based upon
22 the adjudged sentence. A prisoner who has completed the risk reduction incentives prior to the
23 ASR date may have the ASR date nullified due to noncompliance with Department rules or
24 regulations.
25 (g) A defendant released on the ASR date is subject to post-release supervision under
26 this Article. Notwithstanding the provisions in G.S. 15A-1368.3(c), if the defendant has been
27 returned to prison for three, three-month periods of confinement, a subsequent violation shall
28 result in the defendant returning to prison to serve the time remaining on the maximum
29 imposed term, and is ineligible for further post-release supervision regardless of the amount of
30 time remaining to be served.
31 (h) The Department shall adopt policies and procedures for the assessment to occur at
32 diagnostic processing, for documentation of the inmate's progress, and for termination from the
33 incentive program due to a lack of progress or a pattern of noncompliance in the program or
34 with other Department rules or regulations."

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

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

42 **SECTION 5.(e)** This section becomes effective January 1, 2012, and applies to
43 persons entering a plea or who are found guilty of an offense on or after that date.
44

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

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

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

49 "Article 6B.

50 "Treatment for Effective Community Supervision Program.

51 "§ 143B-274.1. Short title.

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

3 **"§ 143B-274.2. Legislative policy.**

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

7 **"§ 143B-274.3. Definitions.**

8 The following definitions apply in this Article:

- 9 (1) Certified and licensed. – North Carolina Substance Abuse Professional
10 Practice Board certified or licensed substance abuse professionals or
11 Department of Health and Human Services licensed agencies.
- 12 (2) Department. – The Department of Correction.
- 13 (3) Division. – The Department of Correction, Division of Community
14 Corrections.
- 15 (4) Eligible entity. – A local or regional government, a nongovernmental entity,
16 or collaborative partnership that demonstrates capacity to provide services
17 that address the criminogenic needs of offenders.
- 18 (5) Program. – A community-based corrections program.
- 19 (6) Secretary. – The Secretary of the Department of Correction.
- 20 (7) State Board. – The State Community Corrections Advisory Board.

21 **"§ 143B-274.4. Goals of community-based corrections programs funded under this**
22 **Article.**

23 The goals of community-based programs funded under this Article are to reduce recidivism
24 and to reduce the rate of probation and post-release supervision revocations from the rate in the
25 2009-2010 fiscal year.

26 **"§ 143B-274.5. Eligible population.**

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

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

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

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

40 **"§ 143B-274.6. Duties of Department of Correction.**

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

- 43 (1) To enter into contractual agreements with eligible entities for the operation
44 of community-based corrections programs and monitor compliance with
45 those agreements.
- 46 (2) To develop the minimum program standards, policies, and rules for
47 community-based corrections programs and to consult with the Department
48 of Health and Human Services on those standards, policies, and rules that are
49 applicable to licensed and credentialed substance abuse services.
- 50 (3) To monitor, oversee, and evaluate contracted service providers.

- 1 (4) To act as an information clearinghouse regarding community-based
2 corrections programs.
- 3 (5) To collaborate with the Department of Health and Human Services on
4 focusing treatment resources on high-risk and moderate to high need
5 offenders on probation, parole, and post-release supervision.
- 6 (b) The Department of Correction, Division of Community Corrections, shall develop
7 and publish a recidivism reduction plan for the State that accomplishes the following:
- 8 (1) Articulates a goal of reducing revocations among people on probation and
9 post-release supervision by twenty percent (20%) from the rate in the
10 2009-2010 fiscal year.
- 11 (2) Identifies the number of people on probation and post-release supervision in
12 each county that are in the priority population and have a likely need for
13 substance abuse and/or mental health treatment, employment, education,
14 and/or housing.
- 15 (3) Identifies the program models that research has shown to be effective at
16 reducing recidivism for the target population and ranks those programs
17 based on their cost-effectiveness.
- 18 (4) Propose a plan to fund the provision of the most cost-effective programs and
19 services across the State. The plan shall describe the number and types of
20 programs and/or services to be funded in each region of the State and how
21 that program capacity compares with the needs of the target population in
22 that region.
- 23 (c) The Department of Correction shall report by March 1 of each year to the Chairs of
24 the Senate and House of Representatives Appropriations Committees, the Senate and House of
25 Representatives Appropriations Subcommittees on Justice and Public Safety, and the Joint
26 Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the status
27 of the Treatment for Effective Community Supervision Program. The report shall include the
28 following information:
- 29 (1) The dollar amount and purpose of funds provided on a contractual basis to
30 service providers for the previous fiscal year.
- 31 (2) An analysis of offender participation data received, including the following:
- 32 a. The number of people on probation and post-release supervision that
33 are in the priority population that received services.
- 34 b. The number of people on probation and post-release supervision that
35 are in the priority population that did not receive services.
- 36 c. The number of people on probation and post-release supervision
37 outside of the priority population that received services.
- 38 d. The type of services provided to these populations.
- 39 e. The rate of revocations and successful completions for people who
40 received services.
- 41 f. Other measures as determined appropriate.
- 42 (3) The dollar amount needed to provide additional services to meet the needs of
43 the priority population in the upcoming budget year.
- 44 (4) Details of personnel, travel, contractual, operating, and equipment
45 expenditures for each program type.
- 46 **"§ 143B-274.7. Contract for services.**
- 47 (a) The Department of Correction shall contract with service providers through a
48 competitive procurement process to provide community-based services to offenders on
49 probation, parole, or post-release supervision.

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

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

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

9 **"§ 143B-274.8. State Community Corrections Advisory Board.**

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

13 **(1)** A member of the Senate.

14 **(2)** A member of the House of Representatives.

15 **(3)** A judge of the superior court.

16 **(4)** A judge of the district court.

17 **(5)** A district attorney.

18 **(6)** A criminal defense attorney.

19 **(7)** A county sheriff.

20 **(8)** A chief of a city police department.

21 **(9)** Two county commissioners, one from a predominantly urban county and one
22 from a predominantly rural county.

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

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

25 **(12)** Two rehabilitated ex-offenders.

26 **(13)** A member of the business community.

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

30 **(15)** A victim service provider.

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

33 **(17)** A clerk of superior court.

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

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

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

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

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

50 **(5)** The Speaker of the House of Representatives shall appoint the following
51 members: the member of the House of Representatives, the county

1 commissioner from a predominantly rural county, and one member of the
2 general public.

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

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

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

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

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

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

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

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

37 **"§ 143B-274.9. State Community Corrections Advisory Board; powers and duties.**

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

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

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

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

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

46 **"§ 143B-274.10. North Carolina Sentencing and Policy Advisory Commission report.**

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

1 **"§ 143B-274.11. Program types eligible for funding; community-based corrections**
2 **programs.**

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

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

11 **SECTION 6.(c)** This section becomes effective July 1, 2011. The Department of
12 Correction may enter into contracts under this section with current program providers in the
13 Criminal Justice Partnership Program on a sole-source basis during the 2011-2012 fiscal year.
14

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

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

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

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

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

35 **"§ 15A-1352. Commitment to Department of Correction or local confinement facility.**

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

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

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

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

8 (1) To the custody of the Department of Correction if the person was fined for
9 conviction of a felony;

10 (2) To the custody of the Department of Correction or to a local confinement
11 facility if the person was fined for conviction of a misdemeanor, provided
12 that (i) if the sentence imposed is for a period of 90 days or less, the
13 commitment shall be to a facility other than one maintained by the
14 Department of Correction, except as provided in ~~G.S. 148-32.1(b)-~~
15 G.S. 148-32.1(b) and (ii) if the sentence or sentences imposed require
16 confinement for more than 180 days, the commitment must be to the custody
17 of the Department of Correction.

18 ..."

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

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

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

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

48 If no other local confinement facility is available and the reason for the requested transfer is
49 that the local confinement facility that would be required to house the prisoner cannot
50 reasonably accommodate any more prisoners due to segregation requirements for particular
51 prisoners or the local facility does not meet the minimum standards published pursuant to

1 G.S. 153A-221, then the judge may order that a prisoner not housed pursuant to the Statewide
2 Misdemeanant Confinement Program established in subsection (b2) of this section be
3 transferred to a facility operated by the Department of Correction as designated by the
4 Department of Correction. In no event, however, shall a prisoner whose term of imprisonment
5 is less than 30 days be assigned or ordered transferred to a facility operated by the Department
6 of Correction."

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

8 "(b2) The Statewide Misdemeanant Confinement Program is established. The Program
9 shall provide for the housing of misdemeanants from all counties serving sentences imposed for
10 a period of more than 90 days and up to 180 days, except for those serving sentences for an
11 impaired driving offense under G.S. 20-138.1. Those misdemeanants shall be confined in local
12 confinement facilities except as provided in subsections (b3) and (b4) of this section. The
13 Program shall address methods for the placement and transportation of inmates and
14 reimbursement to counties for the housing of those inmates. Any county that voluntarily agrees
15 to house misdemeanants from that county or from other counties pursuant to the Program may
16 enter into a written agreement with the Department of Correction to do so.

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

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

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

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

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

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

- 38 (1) The misdemeanant poses a security risk because the misdemeanant:
 - 39 a. Poses a serious escape risk;
 - 40 b. Exhibits violently aggressive behavior that cannot be contained and
41 warrants a higher level of supervision;
 - 42 c. Needs to be protected from other inmates, and the county jail facility
43 cannot provide such protection;
 - 44 d. Is a female or a person 18 years of age or younger, and the county
45 jail facility does not have adequate housing for such prisoners;
 - 46 e. Is in custody at a time when a fire or other catastrophic event has
47 caused the county jail facility to cease or curtail operations; or
 - 48 f. Otherwise poses an imminent danger to the staff of the county jail
49 facility or to other prisoners in the facility.
- 50 (2) The misdemeanant requires medical or mental health treatment that the
51 county decides can best be provided by the Department of Correction.

- 1 (3) The local confinement facility that would be required to house the prisoner
2 (i) cannot reasonably accommodate any more prisoners due to segregation
3 requirements for particular prisoners, or the local facility does not meet the
4 minimum standards published pursuant to G.S. 153A-221, and (ii) no other
5 local confinement facility is available.

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

13 (b4) A misdemeanant housed under the Statewide Misdemeanant Confinement Program
14 established pursuant to subsection (b2) of this section may be transferred to a facility operated
15 by the Department of Correction if the North Carolina Sheriffs' Association, Inc., determines
16 that the local confinement facilities available for housing misdemeanants under the Program are
17 filled to capacity. The Department of Correction shall be reimbursed from the Statewide
18 Misdemeanant Confinement Fund for the costs of housing the misdemeanant, including the
19 care, supervision, and transportation of the misdemeanant."

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

22 **"§ 148-10.4. Statewide Misdemeanant Confinement Fund.**

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

24 (1) Department. – Department of Correction.

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

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

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

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

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

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

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

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

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

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

49 (e) Operating and Administrative Expenses. – Ten percent (10%) of the monthly
50 receipts collected and credited to the Statewide Misdemeanant Confinement Fund shall be
51 transferred on a monthly basis to the Sheriffs' Association to be used to support the Program

1 and for administrative and operating expenses of the Association and its staff. One percent
2 (1%) of the monthly receipts collected and credited to the Statewide Misdemeanant
3 Confinement Fund shall be transferred on a monthly basis to the General Fund to be allocated
4 to the Department of Correction for its administrative and operating expenses for the Program."

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

10 **SECTION 7.(j)** The General Assembly finds that while the Program developed
11 pursuant to G.S. 148-32.1(b2), as enacted by subsection (e) of this section, shall be available
12 statewide on January 1, 2012, it may be available to some counties at an earlier date.
13 Therefore, notwithstanding any other provision of law, a misdemeanor, who has a sentence
14 imposed of more than 90 days and up to 180 days prior to January 1, 2012, excluding those
15 serving sentences for an impaired driving offense under G.S. 20-138.1, may be transferred or
16 reassigned to a local confinement facility designated by the North Carolina Sheriffs'
17 Association, Inc., as provided by the Program developed pursuant to G.S. 148-32.1(b2).

18 **SECTION 7.(k)** Of the funds appropriated to the Department of Correction for the
19 2011-2012 fiscal year, the Department shall transfer the sum of three hundred thousand dollars
20 (\$300,000) to the North Carolina Sheriffs' Association, Inc., for expenses related to initiating
21 the provisions of this Part.

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

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

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

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

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

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

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

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

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

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

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

2 ...
3 (3) Costs and fees designated by law for remission to the Statewide
4 Misdemeanant Confinement Fund."

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

9
10 **PART VIII. ANNUAL REPORT AND SENTENCING COMMISSION DUTIES**

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

13 **"§ 164-50. Annual report on implementation of Justice Reinvestment Project.**

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

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

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

30
31 **PART IX. TITLE**

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

33
34 **PART X. EFFECTIVE DATE**

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