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## Sentencing, Corrections, Prisons, and Jails

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This chapter summarizes legislation enacted by the General Assembly in 2007 affecting the sentencing of persons convicted of crimes, the state Department of Correction (DOC), state prisons, county jails, and other correctional programs. Changes in criminal penalties for substantive criminal offenses are covered in Chapter 7, “Criminal Law and Procedure.”

### **Sentencing**

#### **Increase in Minimum Age for Death Penalty**

S.L. 2007-81 (H 784) amends G.S. 14-17 to increase the minimum age for imposition of the death penalty from seventeen to eighteen years in light of the United States Supreme Court’s decision in *Roper v. Simmons*, 543 U.S. 551 (2005). In *Roper* the Court held that the Eighth and Fourteenth Amendments forbid imposition of the death penalty on those under the age of eighteen.

#### **Forfeiture of Pension by Convicted Elected Official**

Although not a true sentencing matter, S.L. 2007-179 (S 659) adds an additional consequence to convictions of certain public corruption crimes and election law violations by elected officials: forfeiture of all retirement benefits and allowances. Passed in the midst of the public corruption scandal involving Speaker of the House Jim Black, the legislation enumerates the federal and state offenses (including, for example, bribery of public officials and witnesses under 18 U.S.C. § 201, and buying and selling offices under G.S. 14-228) that trigger a forfeiture. A conviction triggers

forfeiture only if the offense was both (1) committed while the defendant was serving as an elected government official and (2) based on acts directly related to the official's government service. All monies forfeited under the law will be remitted to the state Civil Penalty and Forfeiture Fund. The legislation exempts a member's own contributions and interest from the amount forfeited.

### **New Aggravating Factor**

S.L. 2007-80 (S 34), discussed further in Chapter 7, "Criminal Law and Procedure," is noted here to the extent that it enacts G.S. 15A-1340.16(d)(6a), a new aggravating factor effective for offenses committed on or after December 1, 2007, for offenses committed against or causing serious harm or death to a law enforcement or assistance animal while the animal is engaged in its official duties.

## **Corrections**

### **Monitoring of Sex Offenders**

S.L. 2007-213 (H 29) makes substantial changes to North Carolina's regime for tracking certain sex offenders through a satellite-based monitoring system. The act was passed in the context of a nationwide move toward harsher sanctions for and closer monitoring of sex offenders. As of 2006, roughly half of all states used some form of global positioning system (GPS) technology to monitor certain sex offenders.

North Carolina's most recent legislation on this front adds G.S. 14-208.40A, requiring district attorneys during the sentencing phase to present any evidence<sup>1</sup> of the following for offenders convicted of reportable convictions as defined by G.S. 14-208.6(4):

- The offender is a sexually violent predator pursuant to G.S. 14-208.20;
- The offender is a recidivist;
- The conviction was an aggravated offense; or
- The offense involved the physical, mental, or sexual abuse of a minor.

After considering the evidence, if the court determines that the defendant falls into any of the first three of these categories (sexually violent predator, recidivist, or aggravated offender), the court must order the defendant to submit to satellite-based monitoring for life. If the offense was one that involved the physical, mental, or sexual abuse of a minor, but that none of the other three categories applies, the court must order DOC to do a risk assessment of the offender within thirty to sixty days. Based on the results of the risk assessment, the court then determines whether and for how long the offender must submit to satellite-based monitoring. This process applies to sentences entered on or after December 1, 2007.

For defendants who have already been convicted of reportable convictions but for whom there has been no court determination as to whether satellite-based monitoring should apply, new G.S. 14-208B requires DOC to make an initial determination as to whether the offender falls into one of the four categories listed above. If so, DOC schedules a hearing at which the court effectively follows the procedure set out in G.S. 14-208A. The nature and format of this hearing is not set out in the statute, and it appears to be unique insofar as it is scheduled by DOC.

The legislation also adds new G.S. 14-208C, which requires that satellite-based monitoring, if required, begins immediately upon release from prison, or immediately upon sentencing for offenders who receive intermediate or community punishments.

In addition to the new provisions outlined above, S.L. 2007-213 amends G.S. 14-208.42 to make clear that throughout the monitoring period, DOC has authority to contact the offender at the offender's residence and to require the offender to appear at a specific location as required to complete the requirement of the satellite-based monitoring program, regardless of whether the

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1. The statute specifies that district attorneys "have no discretion to withhold any evidence."

offender happens to be on probation, parole, or post-release supervision. The law also requires the offender to cooperate with DOC until the requirement to enroll is terminated and all monitoring equipment is returned. In this vein, the act amends G.S. 14-208.44, effective for offenses committed on or after December 1, 2007, to make it a Class E felony to remove, vandalize, or otherwise interfere with the proper functioning of a monitoring device, and a Class 1 misdemeanor to “fail to provide necessary information” or fail “to cooperate with the Department’s guidelines and regulations for the program.”

For offenders who are placed on probation on or after December 1, 2007, G.S. 15A-1343(b2) is amended to add a special condition requiring offenders to submit to searches of their person, vehicles, and premises that are reasonably related to their supervision. The amendment adds that searches of the probationer’s computer or other electronic mechanism “shall be considered reasonably related to the probation supervision,” and also provides that probationers may be required to pay the cost of positive drug screens. Amendments to G.S. 15A-1374(b)(11) and G.S. 15A-1368.4 make a similar changes to the laws applying to parolees and post-release supervisees, respectively.

S.L. 2007-213 amends G.S. 14-208.9 (effective July 11, 2007, under a technical correction in S.L. 2007-484 [S 613]) to require registered sex offenders who move from one county to another to report in person to the sheriff of the new county and to provide written notice of their new address within ten days of the change of address. The act also amends the residential restrictions on sex offenders under G.S. 14-208.16 to redefine “immediate family member” to include a grandparent, legal guardian, or spouse of the registrant, and limit the siblings who qualify to those eighteen years of age or older. Effective December 1, 2007, the act adds new G.S. 14-208.43(d1) requiring that upon notification by DOC that an offender has been released, pursuant to G.S. 14-208.12A, from the sex offender registration requirement, the Post-Release Supervision and Parole Commission must also lift the satellite-based monitoring requirement if the defendant so requests. Finally, the act amends G.S. 14-208.45, governing the requirement that a one-time fee of \$90 be paid by all new enrollees in satellite-based monitoring, to reflect the enactment of G.S. 14-208.40A and G.S. 14-208.40B.

### **Alcohol Monitoring as a Condition of Parole**

S.L. 2007-165 (S 1290), discussed further in Chapter 21, “Motor Vehicles,” is discussed here to the extent that it amends G.S. 15A-1374(b) to add as a possible condition of parole the requirement that a parolee “[r]emain alcohol free, and prove such abstinence through evaluation by a continuous alcohol monitoring system of a type approved by [DOC].” The act further requires a parolee to pay the fees associated with the use of the continuous alcohol monitoring system to the clerk’s office in the county of conviction, and it requires the clerk’s office to remit the funds to the system service provider. The act is effective for crimes committed on or after December 1, 2007, but Section 9 of the act makes clear that courts already using monitoring systems before this date could continue to do so.

The act defines a *continuous alcohol monitoring system* as a device worn by a parolee that can “detect, monitor, record, and report the amount of alcohol within the wearer’s system” at any time. The act requires DOC to establish regulations for the use of continuous monitoring systems, which must include procedures for offender supervision, monitoring, and transmission of data to the courts.

By January 1, 2008, DOC must issue requests for information to consider the development of pilot programs for using continuous monitoring equipment as an intermediate punishment under structured sentencing or as a condition of probation. By October 1, 2008, DOC must report to the General Assembly with an evaluation of the continuous alcohol monitoring system, the results of the requests for information process described above, DOC’s recommendation for implementing continuous alcohol monitoring, and, finally, funding options, including the possibility of grants and fees to offset the costs of the program.

### **Authority of Private Correctional Officers**

S.L. 2007-162 (S 930) amends G.S. 148-37.3, which concerns the use of private correctional officers employed in a private prison operated in North Carolina under contract with the federal prison system. Originally enacted in 2001, the statute gave correctional officers and security supervisors at private facilities authority to use necessary force and to make arrests consistent with the laws applicable to DOC. The 2007 amendments to G.S. 148-37.3 ease the regulatory burden on DOC, eliminating the requirement that DOC regulate private contractors' practices by, among other things, tracking the names and positions of officers and adopting rules to implement the statute. The amendments also remove the requirement that insurance companies providing coverage to private correctional facilities transmit annually to DOC a certificate of insurance evidencing compliance with G.S. 148-37.3(d), which requires these facilities to carry a set amount of liability insurance.

### **Correction Enterprises**

S.L. 2007-280<sup>2</sup> (H 648) establishes the Division of Correction Enterprises (DCE) within DOC to employ incarcerated offenders in various industrial, agricultural, and service occupations to "provide them with meaningful work experiences and rehabilitative opportunities that will increase their employability upon release from prison" (G.S. 148-128). The division uses offender labor to produce, among other things, road signs, license plates, stationary, uniforms, furniture, and canned foods and to run a laundry service. The act revises and consolidates in new Article 14 of G.S. Chapter 148 the law governing work by incarcerated offenders (previously set forth in scattered sections of G.S. Chapter 148), but does not make major substantive changes to existing law. For example, the Correction Enterprises Fund established under G.S. 148-130(a) replaces the former Prison Enterprises Fund, which had been set forth in now-repealed G.S. 148-2(b).

The purposes of correction enterprises enumerated in the act include

- Providing incarcerated offenders with training opportunities to increase work skills and employability upon release;
- Providing quality goods and services; and
- Generating sufficient funds to be a self-supporting operation.

Additionally, under G.S. 148-130(b), 5 percent of net corrections enterprises proceeds will be credited to the Crime Victims Compensation Fund established under G.S. 15B-23. Inmate wages for work done under the auspices of DCE are set at the discretion of the Secretary of Correction, but are capped under G.S. 148-133(b) at \$3.00 per day unless other state or federal law requires a higher rate.

The legislation sets forth the powers and responsibilities granted to DCE, including the authority to operate within or outside prison facilities; to employ any non-prisoners necessary to operate Correction Enterprises; to purchase machinery and equipment required to operate its enterprises; and to enter into contracts and set prices for the goods and services offered. G.S. 148-132 limits distribution of DCE goods and services to:

- Any public agency or institutions controlled by the state;
- Counties, cities, and towns in North Carolina;
- Any federal, state, or local public agency or institution in any other state;
- 501(c)(3) tax-exempt entities that also receive local, state, or federal grant funding; and
- North Carolina state employees (limited to \$2,500 in purchases annually).

Eligibility of state employees to purchase DCE products expires on July 1, 2012. The act also amends G.S. 66-58(b)(16) to expand the list of agencies for whom DCE laundry services may be performed to include U.S. Veterans Affairs Medical Centers.

All state departments, institutions, and agencies are required under G.S. 148-134 to give preference to correction enterprises products when purchasing items for official use. Purchases

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2. The statute numbers assigned in S.L. 2007-280, G.S. 148-123 through 148-129, were renumbered at the direction of the Revisor of Statutes to G.S. 148-128 through 148-134.

from DCE are exempt from the provisions of Article 3 of G.S. Chapter 143 regarding competitive bidding, although DCE is required under G.S. 148-134 to keep its prices “substantially in accord” with similar goods and services from the private sector.

An appropriation of \$25,000 originally included in the legislation to fund a study of job training programs available to inmates was eliminated in House committee.

### **Inmate Work Assignments and Service Projects**

Another piece of legislation pertaining to inmate labor, S.L. 2007-398 (S 1096), adds G.S. 148-26(e1), which permits DOC to establish work assignments for inmates or allow inmates to volunteer in service projects that benefit units of state or local government or 501(c)(3) nonprofit entities that serve the public interest. Products made pursuant to this provision are exempted from surplus property rules set forth in Article 3A of G.S. Chapter 143.

The act also amends G.S. 148-6 to delete a provision prohibiting female inmates from working on public roads, and amends G.S. 148-33 to delete a restriction on the employment of male prisoners in public buildings in which women are housed or employed.

## **Prisons and Jails**

### **Legal Status of Prisoners**

S.L. 2007-494 (S 229) enacts new G.S. 162-2, effective January 1, 2008, requiring jail administrators to inquire into the legal residency status of any person charged with a felony or an impaired driving offense who is confined for any period in a county jail, local confinement facility, or satellite jail/work release unit. The purpose of the inquiry is to determine, through questioning or examination of relevant documents, if the prisoner is a legal resident of the United States. The act was passed in an atmosphere of growing popular concern about illegal immigration, during a time when wide-reaching immigration reform ranks high on the national political agenda.<sup>3</sup> A number of immigration-related bills other than Senate Bill 229 were introduced but not ratified by the General Assembly in 2007, including the North Carolina Security and Immigration Compliance Act (H 55 and S 1189), the North Carolina Illegal Immigration Prevention Act (H 1485), and H 1950, which would have appropriated funds to encourage state law enforcement partnership with federal immigration officials under 8 U.S.C § 1357(g).<sup>4</sup>

Under S.L. 2007-494, if a jail administrator is unable to ascertain whether a prisoner is a legal resident or citizen of the United States, the administrator must, where possible, make a query through the Division of Criminal Information to the Law Enforcement Support Center of the federal Immigration and Customs Enforcement office of the Department of Homeland Security. This query serves as notice to federal authorities of the prisoner’s status and confinement. The jail administrator is required under G.S. 162-62(d) to report the number of queries performed and the results of those queries to the Governor’s Crime Commission annually, which will in turn make the reports available to the public.

The language in the legislation ultimately ratified by the General Assembly as S.L. 2007-494 first appeared in Senate Bill 405, which would have required jail administrators to request that federal authorities take all “illegal immigrants” into custody as soon as practicable. Iterations of the bill also appeared in House Bill 55, House Bill 1485, and Senate Bill 1189 (the broad immigration reform bills referenced above), none of which was ultimately ratified.

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3. See, e.g., Comprehensive Immigration Reform Bill of 2007, S. 1348, 110th Cong. (2007).

4. This program, which promotes cooperation between the federal Immigration and Customs Enforcement office and state and local law enforcement, is known as the “287(g) program,” in reference to the section of the Immigration and Nationality Act in which it is codified.

As a practical matter, many jail administrators are already engaging in an inquiry similar to that mandated by S.L. 2007-494 under the auspices of the State Criminal Alien Assistance Program (SCAAP).<sup>5</sup> SCAAP is a U.S. Bureau of Justice Assistance program that provides federal payments to states to offset correctional officer salary costs for incarcerating (for at least four consecutive days) undocumented criminal aliens with at least one felony or two misdemeanor convictions for violations of state or local law.<sup>6</sup> In 2006, for example, forty-eight North Carolina counties received SCAAP funds totaling over \$6 million.<sup>7</sup> To receive SCAAP funds, counties must submit records of all inmates in their custody born outside the United States who have no claim to U.S. citizenship. Therefore, the new inquiry and reporting requirements of S.L. 2007-494 may, in many counties, overlap with the inquiry and report already submitted to the Bureau of Justice Assistance under SCAAP.

## Budget and Reporting Requirements

The corrections-related items in the 2007 appropriations act, S.L. 2007-323 (H 1473), include the following:

- DOC and the Post-Release Supervision and Parole Commission must report by March 1 of each year to House and Senate committees the number of inmates enrolled in post-release supervision and parole, the number completing the program, and the number who were enrolled but were terminated from the program.
- The Department of Transportation must transfer \$11.3 million to DOC annually during fiscal years 2007–08 and 2008–09 for inmate road squads and litter crews. Additionally, the Office of State Budget and Management is tasked with performing a cost-benefit analysis of these inmate work crews, and whether current funding for them is adequate.
- The requirements for DOC's annual report on the Alcohol and Chemical Dependency Program set out in G.S. 143B-262.3 are amended to include a report on the number of current inmates with substance abuse problems that require treatment, the number of treatment slots, and the number of inmates who have completed treatment, as well as an analysis of all programs, including, among other things, evidence of reduction in alcohol and drug dependency, improvements in inmate discipline, and recidivism.
- DOC is directed to increase participation in the Inmate Construction Program to improve inmate job skills and reduce recidivism. DOC must also report on the program to House and Senate subcommittees by April 1, 2008, with a description of the program, the number of inmates involved, and the cost savings realized through the use of inmate workers.
- DOC is authorized to reimburse counties for the costs of inmates, parolees, and post-release supervisees awaiting transfer to the state prison system at the rate of \$40 per day.
- DOC is authorized to use funds available during the 2007–09 fiscal biennium for the inmate medical program if expenditures are projected to exceed DOC's inmate medical continuation budget.
- When planning to close a prison facility, DOC is required to consult with the county or municipality where the facility is located, elected state and local officials, and state agencies about possible alternative uses for the facility, with priority given to criminal justice uses.

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5. SCAAP is governed by § 241(i) of the Immigration and Nationality Act, 8 U.S.C. § 1231(i), and Title II, Subtitle C, Section 20301 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (codified as amended in scattered sections of 8, 18 & 42 U.S.C.).

6. See *generally* Programs: State Criminal Alien Assistance Program (SCAAP), [www.ojp.usdoj.gov/BJA/grant/scaap.html](http://www.ojp.usdoj.gov/BJA/grant/scaap.html) (last visited Aug. 28, 2007).

7. Bureau of Justice Assistance, FY 2006 SCAAP Payments, [www.ojp.usdoj.gov/BJA/grant/06SCAAPPayments.pdf](http://www.ojp.usdoj.gov/BJA/grant/06SCAAPPayments.pdf).

- DOC is authorized to continue to contract with Energy Committed to Offenders, Inc., a Charlotte-based nonprofit organization that emphasizes family ties as a means to reduce recidivism, for the purchase of prison beds for minimum security female inmates.
- The Post-Release Supervision and Parole Commission, with the assistance of the Sentencing Policy Advisory Commission and DOC, is directed to compare the amount of time served by each parole-eligible inmate before July 1, 2008, with the time served by comparable offenders under Structured Sentencing (Article 81B of G.S. Chapter 15A). If a parole-eligible inmate has served more time in custody than he or she would have served if sentenced the maximum sentence under Structured Sentencing,<sup>8</sup> the Post-Release Supervision and Parole Commission must reinstate the parole review process for that inmate.
- Harriet’s House, Summit House, and Women at Risk (nonprofit programs for nonviolent women offenders) are required to report by February 1 of each year on their integration with the Division of Community Corrections.
- DOC is required to report to the House of Representatives and the Senate by March 1 of each year on the status of sex offender monitoring programs using global positioning systems (GPS), including the number of offenders enrolled, the number of violations, the number of absconders, the number of offenders projected to be enrolled by fiscal year 2008–09, and the per-offender cost of the program.
- DOC is required to report by March 1 of each year to the House and Senate Appropriations committees on the status of the State-County Criminal Justice Partnership Program, including a requirement for the Research and Planning Division of DOC to review national best practices for community corrections and report on whether currently funded programs should continue or alternatives should be considered.

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8. Section 17.11(b) sets forth a formula for calculating the “maximum” sentence for the purposes of this comparison.