# 22

# Sentencing, Corrections, Prisons, and Jails

This chapter summarizes legislation enacted by the 1999 General Assembly affecting the sentencing of persons convicted of crimes, the state Department of Correction (DOC), state prisons, adult probation and parole, county jails, and other correctional programs, including compensation to crime victims.

## Sentencing, Punishment, and Related Matters

### Misdemeanor Sentencing

Under the Structured Sentencing Act (SSA), the judge's sentencing choices depend on the seriousness of the offense of conviction and the offender's prior criminal record. In sentencing for a felony, the prior record level depends on a point score computed from the number and type of prior convictions. S.L. 1999-408 (H 328), Section 3, clarifies G.S. 15A-1340.14(b), concerning how points are assigned for certain previous offenses. The amendment makes clear that one point is assigned for each prior conviction for a Class A1 or Class 1 nontraffic misdemeanor as well as for each prior conviction of impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), and misdemeanor death by vehicle [G.S. 20-141.4(a2)]. No points are assigned for any other misdemeanor traffic offenses under G.S. Chapter 20. The existing subsection said the same thing but not as clearly.

### Enhancement for Wearing Bulletproof Vest

S.L. 1999-263 (S 1011) adds new G.S. 15A-1340.16C to provide that if a person is convicted of a felony and the court finds that the person, at the time of the felony, was wearing, or had in his

or her immediate possession, a bulletproof vest, then the person is guilty of a felony one class higher than the class the crime would have been in otherwise. This provision does not apply if the evidence that the person possessed a bulletproof vest was needed to prove an element of the felony of which the person was convicted; nor does it apply to law enforcement officers. The legislation is effective December 1, 1999, and applies to offenses committed on or after that date.

Under a recent decision by the United States Supreme Court, *Jones v. United States,* 526 U.S. 227, 119 S. Ct. 1215, 143 L. Ed. 2d 311 (1999), possession of a bulletproof vest may have to be treated as an element of the offense, to be pleaded and proven at trial, rather than as a sentencing enhancement, to be found by the court after conviction. For more on this issue see Chapter 7 (Criminal Law and Procedure).

### Drug Treatment Court

A substantial proportion of persons charged with criminal offenses are using illegal drugs, and arguably in some cases drug dependency causes the criminal behavior. Drug Treatment Court, which began in 1995 under G.S. Chapter 7A, Article 62 (G.S. 7A-790 through 7A-801), is a program directed by the Administrative Office of the Courts (AOC) to encourage the treatment of criminal defendants and convicted offenders for drug abuse. The key feature of the program is that trial judges are actively involved in the treatment. They refer offenders to treatment programs and oversee their progress, commending them when they are doing well and imposing sanctions when they are not.

S.L. 1999-298 (S 852) concerns Drug Treatment Court's function as both a pretrial and a postconviction option for the courts. It adds G.S. 15A-1341(a2) to provide for a deferred prosecution arrangement in which the prosecutor and the defendant agree that the defendant will participate in and successfully complete the Drug Treatment Court program. If the defendant does so, the prosecutor dismisses the charges. If the court having jurisdiction of the case finds that this type of deferred prosecution agreement has been signed, the court may order the defendant placed on probation (presumably with supervision by a probation officer) for this limited purpose. The legislation also amends G.S. 15A-1343(b1) to allow participation in and completion of Drug Treatment Court to be a condition of probation imposed after conviction of a crime.

Even without S.L. 1999-298, existing law [G.S. 15A-1341(a1) and 15A-1343(a)] probably would have allowed the use of Drug Treatment Court in deferred prosecution arrangements and in probation sentences. The legislation, however, makes it clear that these are legitimate uses of the program.

### Delivery of Prison Commitment Orders to Sheriff

S.L. 1999-237 (H 168), Section 18.10, adds new G.S. 7A-109.3 to set deadlines for a court to give the local sheriff a signed order of commitment of a convicted defendant to state prison. The clerk of court must provide the order within forty-eight hours if the district court has imposed the prison sentence and within seventy-two hours if the superior court has imposed it.

### Expunction of Conviction Records

North Carolina law allows expunction (destruction) of records concerning criminal prosecution and conviction in three situations: when an offender was under a certain age at conviction; when the charges against a person of any age are dismissed or the person is acquitted; and when an offender has successfully completed "probation without conviction" under G.S. 90-96. S.L. 1999-406 (H 1135), Section 8, amends G.S. 15A-145 to allow expunction of records of a conviction of misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1) if the offender was under twenty-one years of age at the time of conviction of this offense and was not previously convicted of any felony or nontraffic misdemeanor. The change applies only to offenses committed on or after December 1, 1999.

Section 9 of S.L. 1999-358 amends G.S. 15A-146(a) to make the provision for expunction of the record of prosecution for possession of alcoholic beverages by a person nineteen or twenty years of age, pursuant to G.S. 18B-302(i), if the charge was dismissed or the person was acquitted, applicable only to offenses that occurred before December 1, 1999. This change is to conform to Section 7 of the legislation, which makes this offense a Class 3 misdemeanor effective on that date.

## Sentencing Services Program (Formerly Community Penalties)

Primarily to stem the growth of the state's prison population, the Community Penalties Program was established in 1983 under what is now G.S. Chapter 7A, Article 61. The statewide program has involved a number of local programs, mostly private nonprofit organizations, that operate under contracts with the AOC. Currently the program serves all counties. The program's services are provided by private nonprofit corporations in eighty counties, by local or regional government agencies in four counties, and by AOC–staffed offices in sixteen counties.

The function of local community penalties programs has been to perform investigations of defendants before conviction to determine their prospects for remaining in the community instead of going to prison. The programs select defendants to receive this service on the basis of their likelihood of receiving substantial prison time without the service. The local programs explore options, such as restitution to the crime victim, community service, and various kinds of treatment and supervision for the offender, and prepare a report with recommendations that may be considered by the sentencing judge. The judge may or may not accept the recommendations in the report. In practice the local programs have been defense-oriented, working with defense attorneys rather than directly for judges. Defense attorneys have been free to present or not to present the agencies' investigative reports in court.

The 1999 session brought a major restructuring of the Community Penalties Program. S.L. 1999-306 (H 331) renames the program the Sentencing Services Program and makes it responsive directly to the sentencing court rather than to the defendant's attorney. The legislation amends G.S. Chapter 7A, Article 61 (G.S. 7A-770 through 7A-777), to establish a statewide program "that can provide judges and other court officials with information about local correctional programs that are appropriate for offenders who require a comprehensive sentencing plan that combines punishment, control, and rehabilitation services." The local programs will continue to prepare investigative reports, known as sentencing plans. The new legislation emphasizes investigating the defendant's criminal record in addition to determining the defendant's need for rehabilitative services. If the defendant is sentenced in accord with a sentencing plan, the local program must arrange for necessary services through contracts with other agencies and assist sentenced offenders in obtaining the services called for by the sentence.

As under former law, the AOC Director may establish local sentencing services programs and appoint staff. The staff may be state employees or may be hired on a contractual basis.

The legislation makes each local sentencing services program responsible for targeting for its services offenders who:

- are charged with, or are offered a guilty plea by the state for, a felony for which the law authorizes, but does not require, a sentence of active imprisonment;
- are likely to commit future crimes unless appropriate sanctions are imposed and services provided; and
- would benefit from the types of plans provided by the program.

The local program is also required to prepare sentencing plans requested pursuant to new G.S. 7A-773.1. The presiding judge in a case in which the defendant meets the targeting criteria listed in the previous paragraph may request the local program to prepare a sentencing plan. Also the judge may request a plan for a defendant who does not meet the targeting criteria if the defendant is charged with a Class A1 or Class 1 misdemeanor and has a Level III prior conviction level (meaning five or more prior convictions) and the judge finds that preparing a plan is in the interest

of justice. In addition to the judge, the prosecutor or defendant may request a plan if the defendant meets the targeting criteria.

The defendant may decline to participate in the preparation of a sentencing plan within a reasonable time after someone has requested a plan. If the defendant declines, no plan may be prepared or presented before adjudication of guilt. The defendant's decision to turn down a plan must be in writing and filed with the court.

Perhaps the most important change in the program, in new G.S. 7A-773.1(b), is that *once a sentencing plan has been prepared, it must be presented to the court*, as well as to the defendant and the prosecution, in an appropriate manner. Formerly, plans could be withheld from the court if the defense so desired. However, no information obtained in preparing a plan may be used by the prosecution to establish guilt.

New G.S. 7A-773.1(c) allows the sentencing plan to include recommendations for use of any treatment or correctional resources available, unless the sentencing judge instructs otherwise. If the plan calls for education, treatment, control, or other services for the offender, the plan must, to the extent feasible, identify the resources to provide those services. Furthermore the plan may report that, under the circumstances of the case, no intermediate punishment is appropriate for the offender. Under the SSA, G.S. 15A-1340.11(6), an intermediate punishment is probation with additional conditions, such as intensive supervision, electronic monitoring, or participation in a day reporting center.

Each local sentencing services program must prepare a plan for its own operation, under G.S. 7A-774 as amended. The operational plan must state the program's goals, specify what kinds of offenders the program will investigate, propose procedures to identify eligible offenders, and present ways of insuring that judges will use the program's services where appropriate. The operational plan must be updated annually and be approved by the senior resident superior court judge in the court district. If the senior resident judge does not approve the operational plan, amendments to G.S. 7A-772 require the AOC Director to take that fact into consideration; however, the director may award grants to the program despite the absence of judicial approval.

As in the past, the local programs will continue to have boards of directors, now to be known as sentencing services boards, which may be organized as nonprofit corporations. The boards are responsible for annual preparation of operational plans, as described in the previous paragraph, as well as for submission of the plans to the senior resident judge and the AOC Director. If the sentencing services program is part of a local or state government agency, as some existing community penalties programs are, its board may not make budgeting and personnel decisions.

The legislation amends G.S. 15A-1340.11(6) to delete the provision that made a sentence to supervised probation qualify as an intermediate punishment under the SSA if it was imposed pursuant to a community penalties plan.

The portion of S.L. 1999-306 amending G.S. 15A-1340.11 applies only to offenses committed on or after January 1, 2000. The rest of the legislation becomes effective January 1, 2000, except that community penalties sentencing plans requested for offenders before that date will continue to be governed by the law in effect at the time of the request.

## Capital Punishment

S.L. 1999-358 (S 365) amends G.S. 15-194 to provide that the Secretary of Correction must schedule a date for the execution of a death sentence not less than thirty days nor more than sixty days (formerly the limit was forty-five days) from the date of receiving written notice from the Attorney General that legal proceedings have ended (for example, because the United States Supreme Court has upheld the sentence).

# Prisons

## Costs of Housing Prison Inmates

S.L. 1999-237, Section 18.12, requires DOC to make a progress report by April 1, 2000, to the Joint Legislative Commission on Governmental Operations, the chairs of the Senate and House Appropriations Committees, and the chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety concerning its implementation of recommendations by the Office of State Budget and Management on provision of food and health care to state prison inmates, pursuant to the study directed by S.L. 1998-212, Section 17.8. This report must identify areas in which more efficient services can reduce costs.

## Work Release

Work release is the release of a sentenced prisoner to work at a paid job for a private employer outside the prison. Usually this work is done on weekdays, with the prisoner returning to prison at nights and on weekends. DOC selects prisoners for work release who are legally eligible under G.S. 148-33.1, if suitable employment can be found and the prisoner meets its risk criteria. Some county jails have work release programs as well. Prisoners on work release must contribute from their earnings to the cost of their confinement as well as pay other court-imposed obligations, such as restitution to the crime victim.

Under legislation enacted in 1998 (S.L. 1998-212, sec. 17.25), DOC has conducted a pilot program involving the placement of all inmates in two prisons, the Alamance Correctional Center and the Union Correctional Center, on work release. S.L. 1999-237, Section 18.17, requires DOC to report its progress with this pilot project by June 30, 2000, to the chairs of the Senate and House Appropriations Committees and the chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety. DOC's final report on the project, to these same committees, will be due March 1, 2001.

## Private Prisons

Private prisons are confinement facilities operated by private firms or organizations under contract with state or local government. Legislation enacted in 1997, S.L. 1997-443, Section 19.17(b), required DOC to establish standards for private prisons that confine inmates sentenced by a state other than North Carolina or by the federal courts or inmates sentenced to a county jail (some counties contract for some of their jail needs). S.L. 1999-237, Section 18.19, requires DOC to report its progress on these standards to the Joint Legislative Commission on Governmental Operations by November 1, 1999. DOC must make a final report by March 15, 2000, to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections and Crime Control Oversight Committee, and the chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety.

## Lease-Purchase of Prison Space

S.L. 1999-237, Section 18.20, amends G.S. 148-37 to allow the Secretary of Correction to enter into contracts with private firms to build three close-security prisons with a total capacity of up to 3,000 cells to be operated by DOC pursuant to a lease that contains a schedule for purchase of the facilities over a period of twenty years. DOC must report to the Joint Legislative Commission on Governmental Operations by May 1, 2000, on its progress in developing requests for proposals to build these prisons and its procedures for choosing a contractor. After the contract has been awarded, DOC must continue to report to the commission by May 1 of each year on its progress.

# Probation, Parole, and Post-Release Supervision

## Post-Release Supervision and Parole Commission

Parole is early release from prison, under supervision of a parole officer, that is granted in the discretion of a state agency. In North Carolina this agency was formerly known as the Parole Commission and is now called the Post-Release Supervision and Parole Commission. The Structured Sentencing Act abolished parole for most crimes occurring on or after October 1, 1994. The commission has continued to review prison inmates who are eligible for parole consideration under former law, as well as the limited number eligible for supervised release under the SSA, but the commission's workload is dwindling. As a consequence, S.L. 1999-237, Section 18.2, amends G.S. 143B-267 to reduce the commission's members from five to three, effective August 1, 1999. By that date the Governor must appoint three members to serve four-year, staggered terms. The amendment also requires that the commission make decisions regarding parole, work release, or other matters in its jurisdiction by majority vote of its full membership.

Section 18.1 of S.L. 1999-237 requires the commission to report by March 1, 2000, to the chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on its plan for reducing staff through the 2002–2003 fiscal year. The plan must include at least a 10 percent reduction in staff positions in 2000–2001 as compared with 1999–2000.

## Probation and Parole Caseloads

Probation is a criminal sanction in which the convicted offender receives a suspended sentence to a term of imprisonment subject to certain conditions. The conditions usually include supervision by a probation officer employed by DOC's Division of Community Correction (also known as the Division of Adult Probation and Parole). The Structured Sentencing Act (SSA), effective in 1994, introduced, in effect, two levels of probation: community punishment, which is ordinary probation supervision; and intermediate punishment, which is probation accompanied with other treatments and restrictions. Some examples of intermediate punishment conditions are intensive supervision (by teams of two officers with a small caseload); electronic monitoring; and participation in a day treatment center, a residential treatment program, or the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT) "boot camp" program. The SSA contemplated the use of intermediate punishments for nonviolent offenders who formerly would have gone to prison.

Offenders under probation supervision vary in the risks they present to the public and in their needs for rehabilitative services; thus they require varying degrees and types of supervision. DOC recently introduced a reclassification of its probation officers (as well as parole officers) into three levels: probation parole officer I, probation parole officer II, and probation parole officer III. Probation parole officers I are not armed and specialize in supervising low-risk probationers who receive community punishments. Probation parole officers II supervise high-risk offenders, including those who receive intermediate punishments under the SSA, and these officers are armed while on the job. Probation parole officers III also supervise high-risk offenders and are armed, and they specialize in intensive probation, working in teams of two with caseloads of twenty-five. This division of functions is expected to allocate the division's resources more efficiently to the tasks of supervising and rehabilitating offenders.

S.L. 1999-237, Section 18.18, requires DOC to report by March 1, 2000, to the chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections and Crime Control Oversight Committee concerning the average caseload size for these three new levels of officers. The report must include analysis of the optimal caseloads for officers in these new classifications and the expected impact of the new classifications on the division's expenditures. Finally, it must assess the role of surveillance officers, who serve on two-officer intensive probation teams and specialize in close supervision of high-risk offenders.

# Other Correctional Programs

## Criminal Justice Partnership Program

DOC's Criminal Justice Partnership Program (CJPP) originated in companion legislation to the Structured Sentencing Act, effective in 1994. CJPP's purpose is to encourage local communities, by means of technical assistance and grant funds, to develop programs such as residential treatment and day reporting centers to which criminal offenders can be sentenced if they qualify for an intermediate punishment under the act. The grant funds are provided mainly as block (formula) grants, under G.S. 143B-273.15, and currently total $9.6 million annually.

S.L. 1999-237, Section 18, requires DOC to report by February 1, 2000, to the chairs of the Senate and House Appropriations Committees, Senate and House Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections and Crime Control Oversight Committee on the status of CJPP. The report must include an analysis of offender participation in CJPP–sponsored programs during 1999–2000.

## Crime Victims' Compensation

The Crime Victims' Compensation Act, G.S. Chapter 15B, enacted in 1983, created a Crime Victim's Compensation Commission that, under certain circumstances, may compensate crime victims for economic loss caused by the crime. S.L. 1999-269 (H 290) amends G.S. 15B-3(a) to increase the commission from five to seven members by adding two members appointed by the Secretary of Crime Control and Public Safety. It amends G.S. 15B-10 to allow the director of the commission to decide the compensation award if the claim does not exceed $7,500 (formerly this limit was $5,000). When the claim exceeds $7,500, the director recommends the award amount, and the commission makes the final decision. This change applies to all claims filed on or after July 1, 1999.

S.L. 1999-269 amends G.S. 15B-11(b) to allow but not require denial of a claim if the victim was participating in a nontraffic misdemeanor at the time the victim's injury occurred or if the claimant or a victim through whom the claimant is making the claim engaged in contributory misconduct. The commission may use its discretion in deciding whether to deny a claim on these grounds, and in doing so it may consider whether or not any proximate cause exists between the misdemeanor or contributory misconduct and the injury. Formerly, G.S. 15B-11(a)(6) allowed no discretion in this situation. Thus the commission was compelled to deny claims in which the victim was participating in a nontraffic misdemeanor of any type at the time of the injury. For example, because cohabitation (living with a person of the opposite sex as if married) is a misdemeanor under G.S. 14-184, this former provision was interpreted to require denial of a claim in which a victim was assaulted or murdered by a person with whom he or she was cohabiting at the time. The legislation leaves unchanged the provision in G.S. 15B-11(a)(6) requiring denial of a claim if the victim was participating in a *felony* at the time of the injury.

The change regarding victims engaged in misdemeanors or other misconduct applies to claims filed or pending on or after July 1, 1999. For claims denied before that date on the basis that the victim was participating in a nontraffic misdemeanor at the time of the injury, the commission must reconsider the claims upon written request by the claimant. This written request must be received within two years of the crime on which the claim is based.

S.L. 1999-237, Section 20.2, amends G.S. 15B-21, which already requires annual reporting by the Victims' Compensation Commission to the Governor and the General Assembly, to make this report due by March 15 each year. The report must cover the commission's activities in the prior fiscal year as well as the current fiscal year to date. It also must include the current balance of the Crime Victims' Compensation Fund; the amount carried over from the previous year; the amount of funds received in the previous year from DOC and from the compensation fund established by the (federal) Victims' Crime Act of 1984 [42 U.S.C. § 10601 *et seq.*]; and the amount received and expected from these sources for the current fiscal year.

## Jails

### Reimbursement to Counties for "Jail Backlog"

When convicted criminals are sentenced to state prison (the Division of Prisons within DOC), or are committed to state prison because of revocation of their probation, parole, or supervised release, a temporary shortage of prison space sometimes results and they are held in county jails until space becomes available. The "jail backlog" refers to the number of such offenders held in county jails. Several years ago the jail backlog at times numbered in the hundreds, but as more new prison space has become available, the backlog has diminished. According to DOC, from December 15, 1998, through late August 1999 there was no jail backlog. However, a backlog could reappear if, for example, prison admissions were unusually high or prison facilities had to be closed temporarily for repair or remodeling.

S.L. 1999-237, Section 18.10, continues the responsibility of DOC to reimburse counties at the per diem reimbursement rate of $40 for housing offenders in the jail backlog, as provided by G.S. 148-29, as well as for these offenders' medical costs. Effective October 1, 1999, the measure amends G.S. 148-29 concerning the time period covered by reimbursement: Reimbursement begins on the day after the sheriff has notified DOC's Division of Prisons that a prisoner is ready to be transferred to state prison and the division has informed the sheriff that no bed space is available for that prisoner. If the division determines that no space is available after the sheriff has notified the division that the prisoner is ready, reimbursement must begin on the day after the sheriff notified the division. Formerly, reimbursement began on the sixth day rather than the next day.

*Stevens H. Clarke*