

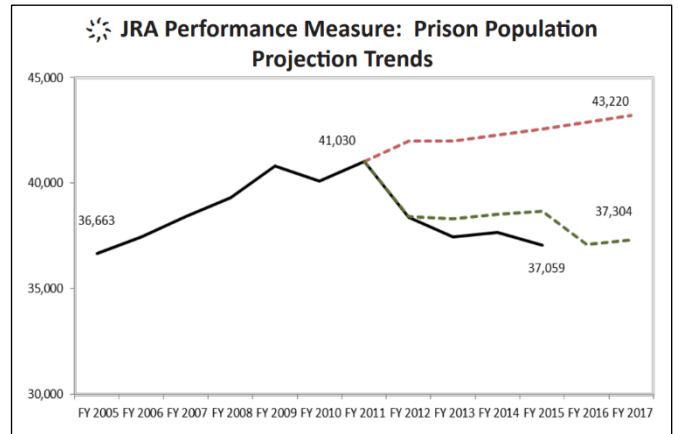
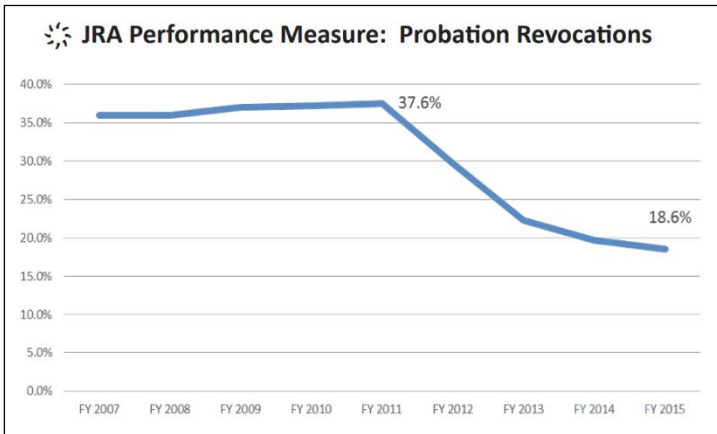
# Justice Reinvestment Act Update

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## Justice Reinvestment Generally

- National-level initiative to reduce correctional spending and reinvest savings in strategies thought to decrease crime and reduce recidivism.
- North Carolina one of over 25 states involved.
- Justice Reinvestment in North Carolina—major changes:
  - Definitions of Community and Intermediate punishment amended
  - Permissible grounds for probation revocation limited
  - Post-release supervision added for all felonies
  - Advanced Supervised Release created
  - Habitual felon law amended
  - Habitual breaking and entering law created
  - G.S. 90-96 conditional discharge made mandatory (later amended again)
  - Statewide Misdemeanant Confinement Program created
- Results:



Source: N.C. Department of Public Safety, North Carolina FY 2014-2015 Justice Reinvestment Performance Measures

## Probation

- Community vs. Intermediate Punishment
  - Revised definitions of Community and Intermediate Punishment
  - More difficult—and sometimes impossible—to distinguish between dispositions
  - The distinction between the two types of dispositions still matters for several reasons:
    - Length of probation
    - Whether Intermediate probation conditions apply
    - Which delegated authority conditions apply

### Before JRA:

Intermediate Punishment: Supervised probation that shall include at least one of the following:

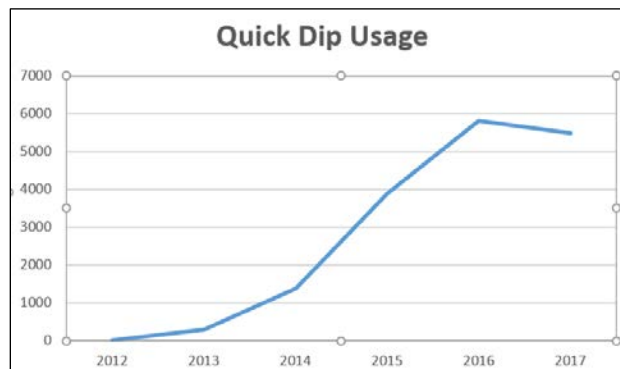
- Special probation (split sentence)
- Intensive supervision
- Electronic House Arrest
- Day-reporting center
- Residential program, or
- Drug treatment court

### After JRA:

Intermediate punishment: Supervised probation that may include:

- Special probation, or
- Drug treatment court

- Quick Dips
  - Short-term jail confinement (2–3 days) that a judge may impose under G.S. 15A-1343(a1)(3), or that a probation officer may impose through delegated authority. G.S. 15A-1343.2.
  - Increased use:



- Increased significance: For misdemeanor defendants placed on probation on or after December 1, 2015, a person is eligible for revocation for any violation committed after serving two prior quick dips in response to technical violations. G.S. 15A-1344(d2).
- Constitutionality

## Probation Violations

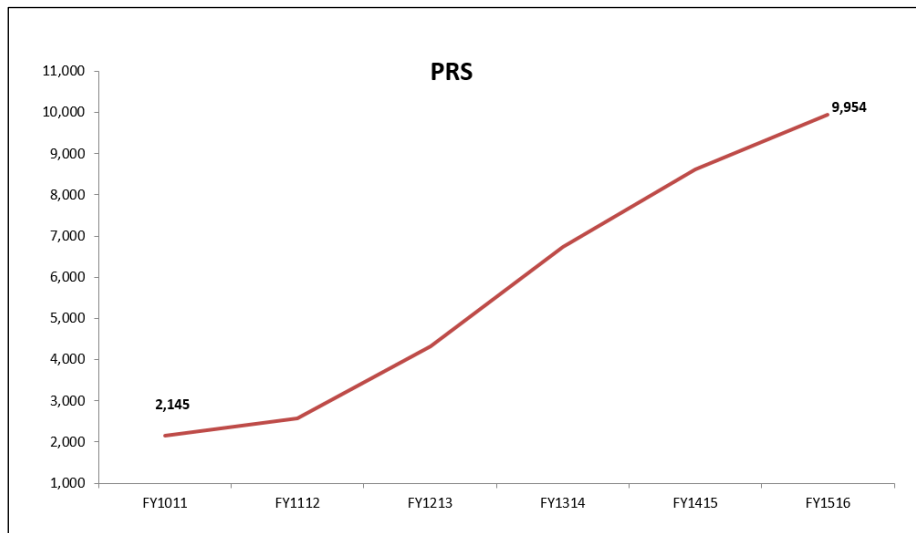
- No revocation for “technical violations”—i.e., violations other than a new criminal offense or absconding. Instead, the court may impose:
  - For felons: 90-day confinement in response to violation (CRV)
  - For misdemeanants placed on probation before 12/1/15: CRV up to 90 days
  - For misdemeanants placed on probation on/after 12/1/15: 2–3 day Quick Dip
  - For DWI: CRV up to 90 days
  - After two such interventions for technical violations, the defendant may be revoked for any subsequent probation violation
- Revocation-eligible violations
  - The defendant must receive notice of a revocation-eligible violation for the court to be empowered to revoke. *State v. Tindall*, 227 N.C. App. 183 (2013).
  - “Commit no criminal offense” under G.S. 15A-1343(b)(1)
    - Can be proved either by *conviction* of a new crime, or through evidence introduced at the probation violation hearing from which the court can make *independent findings* that the defendant committed a new offense. *State v. Lee*, 232 N.C. App. 256 (2014).
    - Mere fact that charges are pending is not a sufficient basis to revoke, but a reference to the pendency of the charges does not spoil a “criminal offense” violation report. *Id.*
  - Absconding under G.S. 15A-1343(b)(3a)
    - “Not abscond by willfully avoiding supervision or by willfully making the defendant’s whereabouts unknown to the supervising probation officer.”
    - “Donut Hole” has mostly closed. *State v. Nolen*, 228 N.C. App. 203 (2013).
    - Recent cases explore the factual boundaries of what is absconding and what is merely a failure to report or a failure to remain within the jurisdiction.
      - *State v. Williams*, 243 N.C. App. 198 (2015) (missed office visits and unauthorized travel to New Jersey not absconding).
      - *State v. Johnson*, \_\_ N.C. App. \_\_, 783 S.E.2d 21 (2016) (one missed office visit not absconding).
      - *State v. Johnson*, \_\_ N.C. App. \_\_, 782 S.E.2d 549 (2016) (probationer absconded when he changed address and avoided supervision for months).
- Appeals
  - Under G.S. 15A-1347, a defendant may appeal a probation violation hearing only when the court revokes probation or imposes special probation (a split sentence).
  - There is no right to appeal when the court imposes a non-terminal period of confinement in response to violation (CRV). *State v. Romero*, 228 N.C. App. 348 (2013).

## Conditional Discharge

- Is conditional discharge under G.S. 90-96(a) mandatory?
  - Yes, “unless the court determines with a written finding, and with the agreement of the District Attorney, that the offender is inappropriate for a conditional discharge for factors related to the offense.” G.S. 90-96(a); State v. Dail, \_\_ N.C. App. \_\_, 805 S.E.2d 737 (2017).
- G.S. 90-96 “limbo”
  - “Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.” G.S. 90-96(a).
  - “Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him.” *Id.*
  - What happens when a person reaches the end of his or her conditional discharge probation without any finding of “violation,” but cannot show that all of the terms and conditions of probation have been “fulfilled”?

## Post-Release Supervision (PRS)

- After JRA, all felons get post-release supervision
  - 9 months for Class F–I felons
  - 12 months for Class B1–E felons
  - 60 months for sex offenders



- Issues
  - Advising the defendant about post-release supervision
  - No bail upon arrest for PRS violations; jail credit
  - Sex offenders and the Parole Commission’s contempt authority
  - The PRS violation hearing process generally