

Justice Reinvestment: Essentials for Superior Court Judges

Felony maximum sentences increased; all felons get post-release supervision <i>Offenses committed on or after December 1, 2011</i>	Class B1–E felonies: 12-month PRS (maximum is 120% of minimum + 12 months) Class F–I felonies: 9-month PRS (maximum is 120% of minimum + 9 months) Note: For all felonies requiring sex offender registration, the PRS period is 5 years. For Class B1–E felonies requiring registration, the max sentence is 120% of the minimum + 60 months
New Advanced Supervised Release (ASR) program created <i>Persons entering a plea or found guilty on or after January 1, 2012</i>	If the prosecutor does not object, the sentencing judge may, when imposing an <u>active</u> sentence, order defendants in the following grid cells into to DOC’s ASR program: <ul style="list-style-type: none">• Class D felonies, prior record levels I–III• Class E felonies, prior record levels I–IV• Class F felonies, prior record levels I–V• All Class G and H felonies Defendants who complete “risk reduction incentives” in prison (or who are unable to do so through no fault of their own) get released onto PRS on their ASR date—the lowest minimum sentence in the mitigated range for the defendant’s offense and prior record level (or 80% of the imposed minimum if a mitigated-range sentence). G.S. 15A-1340.18.
Intermediate punishment redefined <i>Offenses committed on or after December 1, 2011</i>	A sentence that places a defendant on supervised probation and <u>may</u> include drug treatment court, special probation, or other conditions of probation, including the “community and intermediate” conditions set out below. An intermediate sentence no longer <u>requires</u> one or more of the six intermediate conditions (intensive, special probation, EHA, drug treatment court, day reporting center, residential program). G.S. 15A-1340.11(6).
Community punishment redefined <i>Offenses committed on or after December 1, 2011</i>	A sentence to supervised or unsupervised probation or a fine that does not include an active punishment, drug treatment court, or special probation. The sentence may include any of the “community and intermediate” conditions described below. G.S. 15A-1340.11(2).
New set of “community and intermediate probation conditions” (Structured Sentencing cases only) <i>Offenses committed on or after December 1, 2011</i>	The following conditions may be ordered in any case, community or intermediate: <ul style="list-style-type: none">• Electronic house arrest• Community service• Jail confinement for 2–3 days, for no more than 6 days per month, during any 3 separate months of a probation period. If the defendant is on probation for multiple judgments, confinement periods must run concurrently and may total no more than 6 days/month.• Substance abuse assessment, monitoring, or treatment• Participation in an educational or vocational skills development program• Submission to satellite-based monitoring (if a covered sex offender). G.S. 15A-1343(a1).
Certain intermediate punishments repealed <i>Offenses committed on or after December 1, 2011</i>	The following intermediate punishments are repealed: <ul style="list-style-type: none">• Intensive supervision• Residential program• Day reporting center
Delegated authority expanded (Structured Sentencing cases only) <i>Offenses committed on or after December 1, 2011</i>	Unless the judge finds that delegation is not appropriate, a probation officer can add the following conditions in response to a probationer’s failure to comply with 1 or more conditions imposed by the court <u>or</u> if the probationer is “high risk” per DOC risk assessment: <ul style="list-style-type: none">• Perform up to 20 hours of community service (50 hours in intermediate cases)• Submit to an electronically monitored curfew• Submit to substance abuse assessment, monitoring, or treatment• Participate in an educational or vocational skills development program• Electronic house arrest• Report to the probation officer at a frequency determined by the officer• Submit to satellite-based monitoring if a covered sex offender (intermediate only). Defendant can file a motion for court review if the officer adds any of the conditions above. In response to a defendant’s failure to comply with one or more conditions imposed by the court (not based on risk level alone), the probation officer may require jail confinement for 2–3 days, for no more than 6 days per month, during any 3 separate months. There is no right to court review of the confinement condition after it is imposed. G.S. 15A-1343.2.

New “absconding” condition
*Offenses committed on or after
December 1, 2011*

It is a regular condition of probation that a defendant not “abscond, by willfully avoiding supervision or by willfully making the defendant’s whereabouts unknown to the supervising probation officer.” G.S. 15A-1343(b)(3a).

**New Confinement in Response
to Violation (CRV) authorized**
*Probation violations occurring on or
after December 1, 2011*

In response to probation violations other than a new criminal offense or absconding, the court may impose confinement of 90 days for a felony or up to 90 days for a misdemeanor.

- For both felonies and misdemeanors, if the time remaining on the defendant’s sentence is 90 days or less, then the CRV period is for the remainder of the sentence
- A defendant may receive only two CRV periods in a particular case
- Jail credit for time spent awaiting a violation hearing must be applied to any CRV ordered
- CRV periods must run concurrently with one another
- CRV confinement is immediate unless otherwise specified by the court
- CRV is served where defendant would have served an active sentence. G.S. 15A-1344(d2)

Revocation authority limited
*Probation violations occurring on or
after December 1, 2011*

Under G.S. 15A-1344(a) and -1344(d2), the court may revoke probation only for:

- Violations of the “commit no criminal offense” condition
- Violations of the new statutory “absconding” condition
- Defendants who have previously received two CRV periods in the case.

Note: The Parole Commission’s authority to revoke PRS is similarly limited. G.S. 15A-1368.3.

**G.S. 90-96 conditional discharge
amended, made mandatory**
*Persons entering a plea or found guilty
on or after January 1, 2012*

When any eligible defendant who pleads guilty to or is found guilty of:

- Misdemeanor possession of a controlled substance (any schedule or amount);
- Possession of drug paraphernalia under G.S. 90-113.22; or
- Felony drug possession under G.S. 90-95(a)(3) (any schedule or amount)

The court shall (was, “may”), with the consent of the defendant, place the defendant on probation without entering judgment under G.S. 90-96(a). An eligible defendant is any person who has not previously been convicted of any felony, any offense under the Controlled Substances Act, or any state/federal controlled substance/paraphernalia offense.

G.S. 90-96(a1) provides for a discretionary discharge and dismissal of the same offenses listed in subsection (a) for first-time offenders (7-year look-back for prior offenses).

Habitual felon a 4-class enhancement
*Principal felonies occurring on or after
December 1, 2011*

Class I → Class E
Class H → Class D
All other felonies → Class C
G.S. 14-7.6.

**Habitual breaking and entering
status offense created**
*Principal felonies occurring on or after
December 1, 2011*

Defendant charged with felony “breaking and entering” (listed offenses) who has 1 or more prior B/E convictions can, in DA’s discretion, be charged as habitual B/E status offender and, if convicted, sentenced as a Class E felon:

- First- and second-degree burglary (G.S. 14-51)
- Breaking out of a dwelling house burglary (G.S. 14-53)
- Breaking or entering buildings generally, felony (G.S. 14-54(a))
- Breaking or entering a place of religious worship (G.S. 14-54.1)
- Any repealed or superseded offense substantially similar to the offenses above
- Any offense from another jurisdiction substantially similar to the offenses above

- A second B/E offense only qualifies if committed after conviction of the first offense.
 - The principal offense must occur after the defendant turns 18
 - Conviction used to establish habitual status doesn’t count toward prior record level
 - Habitual B/E sentences must run consecutively to any sentence being served
- G.S. 14-7.25 through -7.31.

**Changes to proper place of
confinement**
*Sentences imposed on or after
January 1, 2012*

Misdemeanors:

- 90 days or less: Local jail except as provided in G.S. 148-32.1(b)
- 91–180 days (except for DWI): Statewide Misdemeanant Confinement Program (MCP), through which place of confinement will be determined by the N.C. Sheriffs’ Ass’n
- Sentence or sentences totaling 181 days or more: To DOC

Felons: DOC.

G.S. 15A-1352; 148-32.1.