
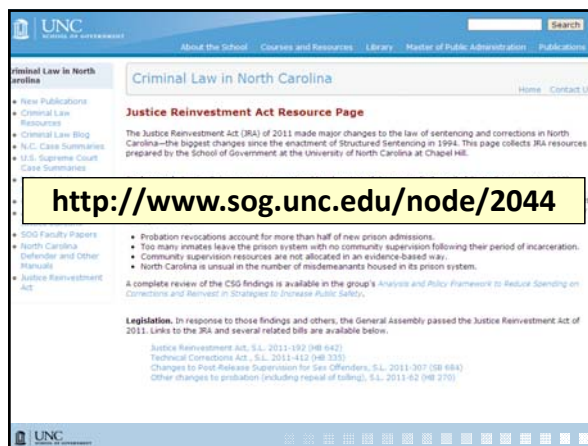


The Justice Reinvestment Act: 2012 Update and Review

Jamie Markham
UNC School of Government

Anne Precythe
Division of Adult Correction

Justice Reinvestment Act Resource Page

The Justice Reinvestment Act (JRA) of 2011 made major changes to the law of sentencing and corrections in North Carolina—the biggest changes since the enactment of Structured Sentencing in 1994. This page collects JRA resources prepared by the School of Government at the University of North Carolina at Chapel Hill.

http://www.sog.unc.edu/node/2044

- Probation revocations account for more than half of new prison admissions.
- Too many inmates leave the prison system with no community supervision following their period of incarceration.
- Community supervision resources are not allocated in an evidence-based way.
- North Carolina is unusual in the number of misdemeanants housed in its prison system.


A complete review of the CSO findings is available in the group's *Analysis and Policy Framework to Reduce Sentencing on Corrections and Reinvest in Strategies to Increase Public Safety*.

Legislation. In response to those findings and others, the General Assembly passed the Justice Reinvestment Act of 2011. Links to the JRA and several related bills are available below.

Justice Reinvestment Act, S.L. 2011-192 (HB 642)
 Technical Corrections Act, S.L. 2011-412 (HB 335)
 Changes to Post-Release Supervision for Sex Offenders, S.L. 2011-207 (SB 664)
 Other changes to probation (including repeal of tolling), S.L. 2011-52 (HB 270)


Justice Reinvestment

- All felons get post-release supervision
- Judges' authority to revoke probation limited
- G.S. 90-96 made mandatory
- Place-of-confinement rules amended




Changes to Felony Sentencing: All felons get post-release supervision

Offenses committed on or after December 1, 2011




Post-release supervision (PRS) for all felonies

- Class B1-E: 12 months PRS (was 9 months)
- Class F-I: 9 months PRS (was 0 months)
- **Corresponding increase in maximum sentences**



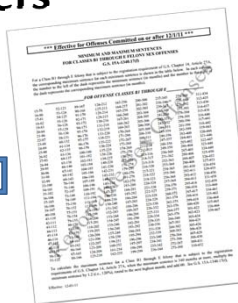
Class H / Level II

I/A	PRIOR LAW
8 - 10	• 8-10 months
6 - 8	NEW LAW
4 - 6	• 8-19 months



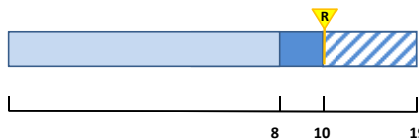
Special PRS/Max Rules for Sex Offenders

- PRS supervision period:
 - All sex offenders: 60 mos.
- Maximum sentence
 - Class B1-E: 120% + 60 mos.
 - Class F-I: 120% + 9 mos.



What Does the Sentence Mean?

- Class F-I felony, offense on/after 12/1/11
 - Maximum is 120% of minimum, *plus 9 months*
 - Release 9 months before maximum (can't refuse)
 - Less earned time
 - 9-month period of supervised release



Consecutive Felonies

- DAC will apply a “one-sentence theory” or “single sentence rule” (15A-1354(b))
 - Sum all minimums
 - Sum all maximums, minus 60, 12, or 9 months for second/subsequent PRS terms

Consecutive Felonies

Consecutive Class H felonies: (8-19) (8-19)
 8 — 10 (+9) months
~~8 — 10 (+9) months~~
 16 — 20 (+9)

 16 — 29 (release 9 months early for PRS)

Consecutive Felonies

Class G consecutive to Class C: (100-132) (15-27)
 100 — 120 (+12) months
~~15 — 18 (+9)~~
 115 — 138 (+12)

 115 — 150 (release 12 months early for PRS)

Consecutive Felonies

Class B1 sex crime; Class E non-reportable; Class H non-reportable
 (192 — 291) (20 — 36) (5 — 15)

 192 — 231 (+60) months
~~20 — 24 (+9)~~
~~5 — 6 (+9)~~
 217 — 261 (+60)

 217 — 321 (release 60 months early for PRS)

Advanced Supervised Release (ASR)

- ASR date is:
 - Lowest mitigated minimum sentence the defendant could have received
 - If already mitigated, then 80% of imposed minimum

Class H Prior Record Level III

I/A
10 - 12
8 - 10
6 - 8

For any presumptive or aggravated sentence, the ASR date is ... _____ months

For a mitigated sentence, the ASR date is 80% of the imposed minimum
 Example: 6-17 month sentence
 ASR date is ... _____ months

Advanced Supervised Release (ASR)

- What are the “risk reduction incentives”?
 - A work in progress...Programs, Services, or Activities
- ASR judgments get program priority

Advanced Supervised Release (ASR)

- Active sentences only, and only at sentencing
- Probably no ASR for drug trafficking
- Effective for convictions on/after Jan. 1, 2012
- If no post-release supervision, just early release

Drug Trafficking

- 2011 JRA did not amend drug trafficking maximums
 - But seemingly did require PRS for Class F-I traffickers

Class H trafficking 25 – 30 months

G.S. 15A-1340.13(d) says no release before minimum

PRS law says release 9 months before maximum

Drug Trafficking

- 2012 Clarifications Act added time to trafficking maximums
- Effective for offenses committed on/after 12/1/12

Class H trafficking 25 – 39 months



Community and Intermediate Punishment Blended

For offenses committed on or after December 1, 2011

* does not apply to DWI



Intermediate Punishment

PRIOR LAW

- Supervised probation that **MUST** include:
 - Special probation
 - Residential program
 - Intensive supervision
 - Electronic house arrest
 - Day reporting center
 - Drug treatment court

NEW LAW

- Supervised probation that **MAY** include:
 - Special probation
 - Drug treatment court
 - “Community and Intermediate conditions”
 - Other conditions in the court’s discretion



Repealed Conditions

- Intensive supervision
- Residential program
- Day-reporting center

For offenses committed on/after 12/1/11



Community Punishment

PRIOR LAW

- Not active
- Can’t include:
 - Special probation
 - Residential program
 - Intensive supervision
 - Electronic house arrest
 - Day reporting center
 - Drug treatment court

NEW LAW

- Not active
- Can’t include:
 - Special probation
 - Drug treatment court
- May include “community and intermediate” conditions



New “Community and Intermediate” Conditions

- Electronic house arrest (no \$90 fee)
- Community service (now includes \$250 fee)
- Substance abuse assessment, monitoring, or treatment
- Educational or vocational skills development
- SBM, if a covered sex offender
- Short-term jail confinement (“dip”)
- After 12/1/12: Cont. alcohol monitoring



Delegated Authority Expanded


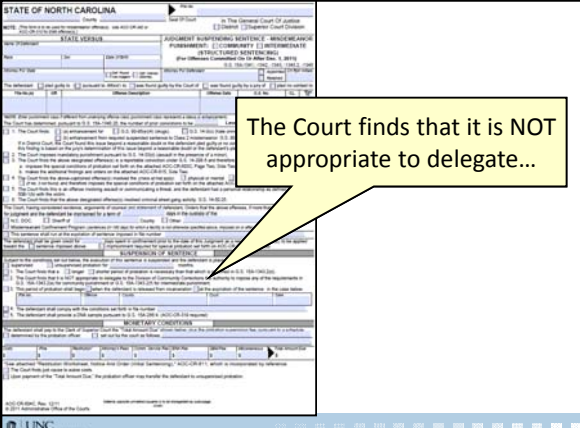
For offenses committed on or after December 1, 2011

* does not apply to DWI




Delegated Authority

- Allows probation officer to add certain conditions
- Applies unless judge says otherwise





The Court finds that it is NOT appropriate to delegate...




JRA Delegated Authority

- With violation or “high risk,” officer can add:
 - Community service, 20/50 hours (comm./intermed.)
 - Increased reporting to officer
 - Substance abuse assessment, monitoring, or treatment
 - Continuous alcohol monitoring (offenses on/after 12/1/12)
 - Electronic house arrest
 - Curfew with electronic monitoring
 - Educational/vocational skills development
 - SBM for covered sex offenders (intermediate only)
- Offender can petition for court review of officer-imposed conditions




JRA Delegated Authority

- In response to violation (not based on risk alone), officer can order “Quick dip”
 - 2-3 days, up to 6 days per month, in any three separate months
 - Cannot be “stacked” from multiple cases
 - Must follow detailed procedure (waiver of rights)



JRA Delegated Authority

- Constitutional concerns:
 - Due process
 - Separation of powers
 - Knowing/voluntary waiver



Are you allowing delegated authority?

1. Yes (generally)
2. No (generally)
3. All conditions except quick dips

The Justice Reinvestment Act: Implementation

Anne Precythe
Division of Adult Correction

Judges' Revocation Authority Limited

For probation violations occurring on or after December 1, 2011

* DOES apply to DWI

Limit on Revocation Authority

For probation violations occurring on or after December 1, 2011...

- Court may only revoke probation for:
 - New criminal offense
 - Absconding
- For other violations, court may order Confinement in Response to Violation (“CRV”)
- After two CRV periods, court may revoke for any violation

Which date matters for purposes of limiting your authority to revoke probation?

1. Offense date of crime for which person is on probation
2. Date of alleged offending behavior
3. Date violation report filed
4. Date of violation hearing

Confinement in Response to Violation (CRV)

- Felony CRV: 90 days
- Misdemeanor CRV: “Up to” 90 days

Confinement in Response to Violation (CRV)

- Before 2012 clarification:
 - If remaining sentence was 90 days or less, CRV was required to be for that remaining period (a “terminal CRV”)
- After 2012 clarification (effective 7/16/12):
 - 90-days or less rule applies only to felonies

After December 1, 2011, a felony probationer with an 8-19 month suspended sentence violates probation by breaking his curfew.

How long of a CRV period can the court order in response to the violation?

1. Up to 90 days
2. 90 days exactly
3. 6 months

Can you still order a split sentence after the JRA?

1. Yes
2. No

Post-JRA confinement types

- **Short-term jail confinement (“dip”):**
 - Up to 18 days, served in 2-3 day increments, 6 days per month
- **Special probation (“split”):**
 - One-fourth of imposed maximum
- **Confinement in Response to Violation (“CRV”):**
 - 90 days (or “up to 90” for misdemeanors)
- **Contempt**
 - Up to 30 days

Must an offender be “dipped” before he can be “dunked”?

1. Yes
2. No

Confinement in Response to Violation (CRV)

- Can CRV be served on weekends?
 - State v. Miller

Confinement in Response to Violation (CRV)

- CRV periods must run concurrently with one another
 - Regardless of whether the suspended sentences were set to run consecutively

Confinement in Response to Violation (CRV): Jail Credit

- Jail credit for time awaiting a violation hearing must be applied to CRV period
- Statute does not require—or expressly allow—crediting of other jail credit to CRV (e.g., pretrial confinement)
 - Other credit should be *considered* to determine what time remains on suspended sentence

Confinement in Response to Violation (CRV): Where to Serve

- CRV served where defendant would have served an active sentence
 - Felons: DAC
 - Misdemeanors: Jail or prison, depending on underlying sentence length
- CRV is served “flat”: no earned time/good time

Confinement in Response to Violation (CRV): Appeals

- No statutory appeal provision for CRV
- Possibly covered under G.S. 15A-1347
- Other writs possible

What do you think?

1. CRV cannot be appealed
2. CRV can be appealed just like a revocation
3. Only “terminal CRVs” can be appealed

Revocation-eligible violations

New Criminal Offense

- “Commit no criminal offense in any jurisdiction”
- What does it mean to “commit” a criminal offense?
 - Can a pending charge be a probation violation?
 - Or must there be a conviction?

What is the practice in your district?

1. No violation without *conviction*
2. Violations are sometimes based on a *pending charge*

New Criminal Offense

- No violation based on a pending charge...
 - State v. Guffey, 253 N.C. 43 (1960)
- ...unless the probation court makes “independent findings” that the alleged criminal activity occurred
 - State v. Monroe, 83 N.C. App. 143 (1986)

Statutory Absconding

- New regular condition: “Not to abscond, by willfully avoiding supervision or by willfully making the defendant’s whereabouts unknown.”

Applies to persons on probation for offenses committed on or after December 1, 2011 -- G.S. 15A-1343(b)(3a)
- Revocation limitation: “The court may only revoke probation for a violation of a condition of probation under G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a)....”

A defendant on probation for an offense that occurred before December 1, 2011, is alleged to have violated probation by “absconding” in early 2012.

Can the court revoke the defendant’s probation?

1. Yes
2. No

Can you impose CRV for a new criminal offense or statutory absconding?

1. Yes
2. No

Electing to Serve after JRA

- No express statutory provision...since 1997
- Options:
 - Admit to new crime or absconding?
 - Reframe “technicals” as crimes?
 - Reduce-then-CRV?
 - CRV-then-terminate?
 - Contempt
- Remember: Mandatory PRS after prison



Conditional discharge under G.S. 90-96

Pleas entered or findings of guilt on or after January 1, 2012



90-96, generally

- Deferral for first-time drug offenders
 - Probation without entry of judgment
 - Discharge and dismissal if successful
 - Upon violation, court may enter judgment and sentence
 - If under 22, opportunity to expunge



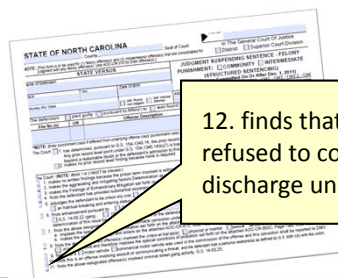
90-96(a): Eligibility

- Defendant eligibility:
 - No prior felonies of any kind; no prior drug convictions
 - No prior discharge and dismissal
- Offense eligibility:
 - All simple possession offenses (felony and misdemeanor)
 - Possession of drug paraphernalia
- “May” becomes “shall”
 - 90-96(a) made mandatory for eligible defendants (who consent)



90-96(a): Eligibility

- If defendant doesn't consent...



12. finds that the defendant refused to consent to conditional discharge under G.S. 90-96(a).



90-96(a): Eligibility

- Confirming eligibility
 - Review criminal record for disqualifiers
 - If none appear, you should query AOC's confidential file for record of prior dismissal & discharge that has been expunged



STATE OF NORTH CAROLINA

County

In The General Court Of Justice
 District Superior Court Division

STATE VERSUS

REQUEST FOR REPORT OF CONDITIONAL DISCHARGE G.S. 15A-151

Name Of Defendant (Type Or Print)

Drivers License No. State Race Sex Date Of Birth Full Social Security No. Age At Time Of Offense

Attorney For State Not Present Not Waiver Attorney For Defendant Appointed Col Ryan Initials

FINDINGS AND REQUEST

The Court hereby finds that:

1. The defendant named above has been charged with an offense that may qualify the defendant for a conditional discharge pursuant to: G.S. 90-96 G.S. 90-113.14 G.S. 14-50.20
2. In the absence of a prior conditional discharge that would disqualify the defendant, he/she is otherwise eligible for such conditional discharge under the statute identified.
3. The defendant has pled guilty to or been found guilty of the offense charged. (Check either No. 3 or 4.)
4. In anticipation of the disposition of the charge(s), and in the interest of an expeditious resolution in the event of a possible verdict of guilt, the State and defendant jointly have requested, as indicated by their signatures below, that the Court report on whether the defendant has a prior conditional discharge that would disqualify her/him for such conditional discharge.

“In anticipation of the disposition of the charge(s), and in the interest of an expeditious resolution in the event of a possible verdict of guilt . . .

90-96(a): Eligibility

- FAQ: What if defendant is convicted of multiple G.S. 90-96 eligible offenses at the same time?

90-96(a1)

- Discretionary discharge under G.S. 90-96(a1)
 - 7-year look-back period for prior convictions

90-96 Probation

- Generally, ordinary probation rules apply.
 - State v. Burns, 171 N.C. App. 759 (2005)
- G.S. 90-96(a)
 - Does not mandate particular conditions
 - Drug education program optional
 - Supervised or unsupervised, up to 5 years
- G.S. 90-96(a1)
 - Must be for at least 1 year
 - Drug education school mandatory

90-96 Probation Violations

- May be revoked for any violation (no limits on revocation authority)
- Incarcerative conditions inapplicable (no splits, dunks, dips, etc.)
- Best to return to county of origin

Place of Confinement

Sentences imposed on or after January 1, 2012

Place of Confinement

Pre-January 1, 2012	Post-January 1, 2012
Felons: DOC, except at sheriff or board request Misdemeanants: 1-90 days: Local jail, unless overcrowded 91+ days: Jail or DOC, in judge's discretion	Felons: DAC Misdemeanants: 1-90 days: Local jail, unless overcrowded 91-180 days: Statewide Misd. Confinement Pgm. 181+ days: DAC

Choose only one!

N.C. DAC. Sheriff of [] Misdemeanant Confinement Program

Place of Confinement Rules

Sentence imposed of 90 days or less: Local jail

- At county expense (State reimbursement ended 2009)

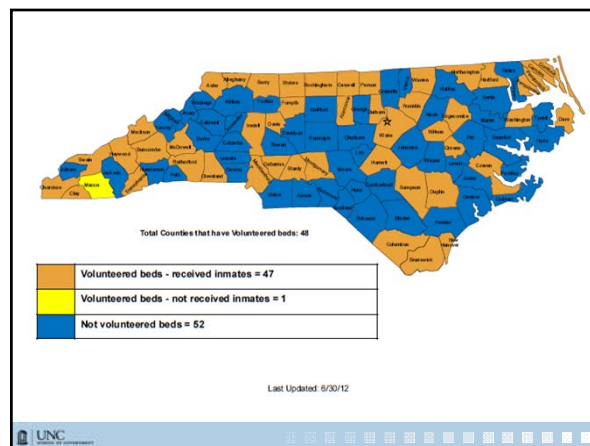
Place of Confinement Rules

Sentence imposed for 91 to 180 days, except DWI

- Statewide Misdemeanant Confinement Program (MCP)
- How it works
 - Judge commits defendant to MCP
 - N.C. Sheriffs' Association identifies space in a jail that has volunteered space to the program
 - If no space, defendant goes to DAC
 - MCP reimburses the custodian

MCP Agreement

- Contract between county, DPS, and the sheriff
- Reimbursement rates
 - \$40/day for housing
 - \$25/hour for supervision during transport
 - \$0.55/mile for transport



MCP Money

- Statewide Misdemeanant Confinement Fund established in 2011
- Funded by new court costs
 - \$18 district court cost
 - \$50 Improper Equipment cost
 - Expected to generate \$31 million annually
- 10% to N.C. Sheriffs' Association
- 1% to DAC



Place of Confinement Rules

Sentence or sentences imposed of more than 180 days: DAC



G.S. 15A-1352

“A person sentenced for a misdemeanor who has a sentence imposed...that requires confinement for a period of more than 90 days and up to 180 days...shall be committed...to the [MCP].”

vs.

“If the sentence or sentences imposed require confinement for more than 180 days, the commitment must be to [DAC].”



DWI Confinement Rule

- JRA did not change the DWI rule
 - G.S. 20-176(c1)
- That does not mean that all DWI's go to DAC!



DWI Confinement Rule

- If first DWI and never jailed for Ch. 20 violation:
 - Jail, regardless of sentence length
- If second/subsequent DWI or previously jailed for a Ch. 20 violation:
 - 90 days or less: Local jail
 - 91-180 days: Local jail or DAC in court's discretion
 - 181+ days: DAC



Place of Confinement

- JRA did not change split sentence rule (G.S. 15A-1351):
 - Jail or prison (court discretion)
 - Must be jail if noncontinuous



Other Confinement Types

- “Dips”: Jail
- CRV (“dunks”): Served where the defendant would have served an active sentence
 - Look at the judgment suspending sentence
 - MCP if suspended sentence 91-180 days
 - DAC if a felony



Habitual felon law amended

Principal felonies occurring on/after December 1, 2011



Habitual Felon

- Four-class enhancement
 - Class I → Class E
 - Class H → Class D
 - All others Class C



Habitual breaking and entering status offense created

Principal felonies occurring on/after December 1, 2011



Habitual B/E

- Second “felony B/E” can be sentenced as Class E
 - 1st/2nd degree burglary
 - Breaking out of a dwelling
 - Breaking or entering buildings (felony)
 - Breaking or entering place of worship
 - Substantially similar out-of-state offense
- Operationally similar to habitual felon law



Questions?