

The Justice Reinvestment Act

Legal and Policy Overview for Officers and Frontline Supervisors

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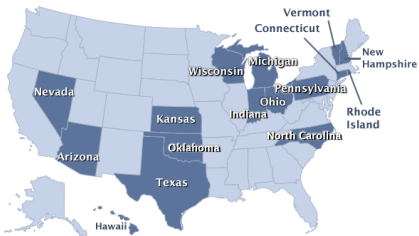
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“A data-driven justice reinvestment approach . . . to reduce spending on corrections and reinvest in strategies to increase public safety.”

– Council of State Governments







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Key findings

- Revoked probationers account for too many prison entries (over half)
- Too many inmates leave prison with no supervision in the community
- Treatment and supervision resources not allocated in an evidence-based way



Legislation

- Justice Reinvestment Act (HB 642)
- Technical Corrections (HB 335)
- Amend Conditions of Probation (HB 270)
- Sex Offender Supervision (SB 684)



PROBATION CHANGES	
Revocation authority limited <i>Probation violations occurring on or after December 1, 2011.</i>	Under G.S. 15A-1344(g), the court: <ul style="list-style-type: none"> • Violations of the "commit no crime" condition • Violations of the new statutory condition • Defendants who have previous convictions
New Confinement in Response to Violation (CRV) authorized <i>Probation violations occurring on or after December 1, 2011.</i>	Under G.S. 15A-1344(d), new criminal offenses, confinement in a residential treatment center, or a sentence is 90 days or less, the CRV period is the remainder of the sentence. <ul style="list-style-type: none"> • A defendant may receive only one CRV period. • Jail credit must first be applied. • CRV periods must run concurrently. • CRV confinement is immediate. • CRV served where the defendant is confined.
Tolling repeated <i>Persons placed on probation on or after December 1, 2011.</i>	G.S. 15A-1344(g) is repealed.
Statutory absconding condition added <i>Offenses committed on or after December 1, 2011.</i>	As a regular condition, the probationer must avoid supervision or by willfully violating the supervising probation officer's instructions.
Other new probation conditions added <i>Offenses committed on or after December 1, 2011.</i>	Drug screen. As a regular condition, the probationer must submit to a random urine, or blood specimen when the probation officer determines it is necessary. <ul style="list-style-type: none"> • Not knowingly associate with any known street gang members.

Probation violations occurring on or after December 1, 2011

Persons placed on probation on or after December 1, 2011

Offenses committed on or after December 1, 2011

Overview

Changes related to...

- Probation
- Post-release supervision
- Other changes

Probation

Limit on Judges' Revocation Authority

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



Limit on Revocation Authority

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

- Court may only revoke probation for:
 - New criminal offense
 - Absconding (under new “absconding” condition)
- For other violations, court may order Confinement in Response to Violation (“CRV”)



Confinement in Response to Violation (CRV)

- Permissible in response to violations other than “commit no criminal offense” and “absconding”
 - Felony CRV: 90 days
 - Misdemeanor CRV: Up to 90 days

If remaining sentence is 90 days or less, CRV period is for that remaining period



After December 1, 2011, a misdemeanor probationer with a 60-day suspended sentence violates probation by possessing a firearm.

Can the court revoke the defendant’s probation?

- Yes
- No





After December 1, 2011, a misdemeanor probationer with a 60-day suspended sentence violates probation by possessing a firearm.

Can the court revoke the defendant's probation?

- Yes
- **No**



After December 1, 2011, a misdemeanor probationer with a 60-day suspended sentence violates probation by possessing a firearm.

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

- 15 days
- Up to 60 days
- 60 days exactly



After December 1, 2011, a misdemeanor probationer with a 60-day suspended sentence violates probation by possessing a firearm.

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

- 15 days
- Up to 60 days
- **60 days exactly**

If remaining sentence is 90 days or less, CRV period is for that remaining period





After December 1, 2011, a misdemeanor probationer with a 120-day suspended sentence violates probation by failing to pay restitution.

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

- Up to 90 days
- 90 days exactly
- 120 days



After December 1, 2011, a misdemeanor probationer with a 120-day suspended sentence violates probation by failing to pay restitution.

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

- Up to 90 days
- 90 days exactly
- 120 days



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?

- Up to 90 days
- 90 days exactly
- 6 months





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?

- Up to 90 days
- **90 days exactly**
- 6 months

NC STATE COURTS
NORTH CAROLINA
County: _____ Seat Of Court: _____
In THE General Court Of Justice
District Superior Court
STATE VERSUS
**ORDER ON VIOLATION OF PROBATION
OR ON MOTION TO MODIFY
(For All Modifications On Or After Dec. 1, 2011)**
G.S. 15A-1344, 15A-1345
Def. Found Not Indigent Def. Waived Attorney
Attorney For Defendant Appointed Cr Rptr Initials
Retained
Sentence: _____ Name Of County And File No. (County Of Original Conviction): _____
The Court upon: (check one option)
1. 15A-1342(b) or (d). After reasonable notice to the defendant, the Court finds does not find that probation is warranted by the defendant's conduct and the ends of justice.
2. After considering the record contained in the file(s) numbered above, together with the evidence presented in the statements made on behalf of the State and the defendant, the Court finds that the defendant is charged with specified conditions of the defendant's probation community punishment intermediate punishment
Violation Report or Notice of Hearing which is incorporated by reference.
If a hearing was held before the Court and:
The Court is reasonably satisfied in the exercise of its discretion that the defendant has violated each of

CONFINEMENT IN RESPONSE TO VIOLATION - G.S. 15A-1344(d2)

NOTE: Confined under this section shall run concurrent with any period of confinement imposed under this section. Any period of confinement imposed under this section may NOT be ordered if the defendant has previously received probation or conditional discharge in accordance with the Court's Other Modification Of Probation and the defendant has not yet received two previous periods of confinement.

1. The defendant shall be confined for a period of:
NOTE TO COURT: If, after application of all provisions of this section, the defendant would remain on the defendant's maximum imposed sentence, this select file. a. for felony probation or b. for misdemeanor probation.
 a. 90 days, for felony probation.
 b. _____ days, for misdemeanor probation.
 c. (Balance of remaining sentence) days, the period of incarceration, defendant's probation is terminated.
NOTE: ACC-CR-612 must be completed in every case in which a defendant was ordered in the original Judgment Suspending Sentence, as a condition of probation, to pay restitution in an amount exceeding \$250 to a victim. All civil victims. For any restitution award previously documented for a WR4 victim, the clerk may not begin the actual collection of the award until the number of days specified in this paragraph has elapsed.

2. The period of confinement imposed above shall:
 a. C.O.C. Sheriff of _____
 3. The defendant shall be given credit for the period of confinement imposed if credited to the remainder of defendant's sentence.
 4. Other: _____

OTHER: _____

Balance of remaining sentence (if 90 days or less) if this period of incarceration, defendant's probation is terminated

Confinement in Response to Violation (CRV)

- After two CRV periods, the court may revoke for any violation



In 2012, a felony probationer who has received two prior 90-day CRV periods violates probation again by failing to complete treatment.

Can the court revoke the defendant's probation?

- Yes
- No

In 2012, a felony probationer who has received two prior 90-day CRV periods violates probation again by failing to complete treatment.

Can the court revoke the defendant's probation?

- **Yes**
- No

*But note that
revocation is not
REQUIRED!*

In 2012, a felony probationer who has received two prior 90-day CRV periods violates probation again by failing to complete treatment.

Could the court order a third CRV period?

- Yes
- No



In 2012, a felony probationer who has received two prior 90-day CRV periods violates probation again by failing to complete treatment.

Could the court order a third CRV period?

- Yes
- No

Maximum of two CRV periods per case. But the court could order other confinement through special probation or contempt.




Confinement in Response to Violation (CRV)

- CRV periods cannot be “stacked”
- Jail credit for time awaiting a violation hearing gets applied to CRV period first
- CRV served where defendant would have served an active sentence
 - Felons: DOC
 - Misdemeanors: Jail or prison, depending on underlying sentence length






Tolling Repealed
Persons placed on probation or after December 1, 2011




Tolling—Three Categories

- **Offense date before 12/1/2009**
 - Tolling
- **Offense date on or after 12/1/2009, but placed on probation before 12/1/2011**
 - Tolling, with credit-back provision
- **Placed on probation on or after 12/1/2011**
 - No tolling



Statutory
“Absconding” condition
For offenses committed on or after December 1, 2011



Statutory Absconding

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

-- G.S. 15A-1343(b)(3a)

Offenses committed on or after December 1, 2011



In 2012, a defendant on probation for an offense that occurred before December 1, 2011, is alleged to have violated probation by absconding.

Can the court revoke the defendant’s probation?

- Yes
- No



In 2012, a defendant on probation for an offense that occurred before December 1, 2011, is alleged to have violated probation by absconding.

Can the court revoke the defendant’s probation?

- Yes
- **No**

This offender would not be subject to the new statutory absconding condition. The court can only revoke probation for violations of the statutory absconding condition (or a new criminal offense).





Other New Probation Conditions
For offenses committed on or after December 1, 2011

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New Probation Conditions

- Regular condition: Drug screens
- Special conditions: New gang conditions
- Prison visit requirement repealed

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Community and Intermediate Punishment
For offenses committed on or after December 1, 2011

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Intermediate Punishment

EXISTING 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

Community Punishment

- **NEW LAW:** A non-active sentence that does not include special probation or drug treatment court, but may include any of the new “Community and Intermediate Probation Conditions” or other conditions



New “Community and Intermediate” Conditions

- Electronic house arrest
- Community service
- Substance abuse assessment, monitoring, or treatment
- Educational or vocational skills development
- SBM, if a covered sex offender
- Short-term jail confinement (“quick dip”)



For an offender in a C/I/A cell on the sentencing grid with an offense date after December 1, the court orders supervised probation with EHA.

What type of sentence is it?

- Community
- Intermediate
- Whatever the judge says it is



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What type of sentence is it?

- Community
- Intermediate
- **Whatever the judge says it is**





New “Community and Intermediate” Conditions

- Electronic house arrest
- Community service
- Substance abuse assessment, monitoring, or treatment
- Educational or vocational skills development
- SBM, if a covered sex offender
- Short-term jail confinement (“quick dip”)

“Community and Intermediate Probation Conditions”

“Intermediate Punishments”

New “Community and Intermediate” Conditions

- Electronic house arrest
- Community service
- Substance abuse assessment, monitoring, or treatment
- Educational or vocational skills development
- SBM, if a covered sex offender
- **Short-term jail confinement (“quick dip”)**

“Quick Dip” Jail Confinement

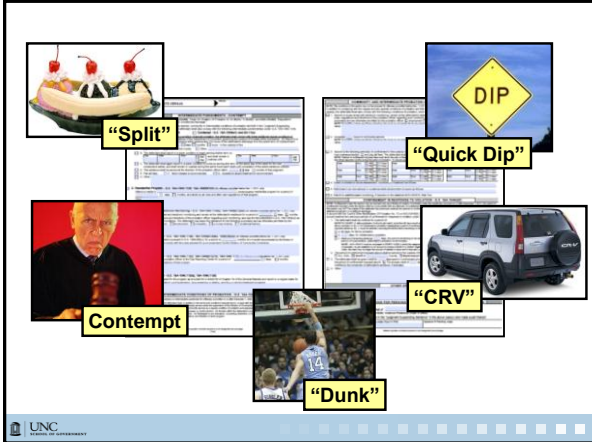
- Served in 2-3 day increments
- Maximum of 6 days per month
- Three separate months
- Total of 18 days per case

Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM	for	<input type="checkbox"/> 2 days <input type="checkbox"/> 3 days

Confinement options


- **Short-term jail confinement (“quick 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






Delegated Authority

For offenses committed on or after December 1, 2011



Delegated Authority

- Allows probation officer to add certain conditions
- Applies unless judge says otherwise
- Structured Sentencing cases only (not DWI)



JRA Delegated Authority

- Procedure:
 - Officer prepares violation report
 - Officer informs probationer of right to counsel and a hearing on the violation
 - Offender waives those rights, in writing, with supervisor signing as witness
 - Go to jail
 - If offender does not waive, proceed with regular (court) violation process



For an offense committed after December 1, 2011, a misdemeanor is sentenced to community punishment. The RNA shows her to be Supervision Level 1.

In the absence of a violation, which of the following conditions could the probation officer add through delegated authority?

- 25 hours community service
- Electronic house arrest
- 2 days in jail
- All of the above



For an offense committed after December 1, 2011, a misdemeanor is sentenced to community punishment. The RNA shows her to be Supervision Level 1.

In the absence of a violation, which of the following conditions could the probation officer add through delegated authority?

- 25 hours community service
- **Electronic house arrest**
- 2 days in jail
- All of the above





JRA Delegated Authority

- Reminders:
 - Offense dates after December 1, 2011
 - Structured Sentencing only (no DWI)
 - Probation only (no post-release supervision)

Post-Release Supervision

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

*Offenses committed on or after
December 1, 2011*



	I 0-1 Pts	II 2-3 Pts	III 4-5 Pts	IV 10-13 Pts	V 14-17 Pts	VI 18+ Pts
Death or Life Without Parole						
A	A	A	A	A	A	A
B1	240-300 192-240	276-342 221-276	312-397 254-317	347-475 292-348	376-470 326-420	390-483 306-403
B2	A	A	A	A	A	A
C	A	A	A	A	A	A
D	A	A	A	A	A	A
E	A	A	A	A	A	A
F	EA	EA	EA	A	A	A
G	EA	EA	EA	EA	A	A
H	EA	EA	EA	EA	EA	EA
I	EA	EA	EA	EA	EA	EA

CLASS	PRIOR CONVICTION LEVEL		
	I No Prior Convictions	II One to Four Prior Convictions	III Five or More Prior Convictions
A1	CEA	CEA	CEA
1	C	CEA	CEA
2	C	CEA	CEA
3	C	CEA	CEA

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**

Post-release supervision (PRS) for all felonies

MAXIMUM SENTENCES UNDER CURRENT LAW

- Class F-I: 120% of minimum
- Class B1-E: 120% of minimum, plus 9

MAXIMUM SENTENCES UNDER NEW LAW

- Class F-I: 120% of minimum, plus 9
- Class B1-E: 120% of minimum, plus 12

A Prior Record Level II defendant is convicted of a Class H felony.

I/A
8 - 10
6 - 8
4 - 6

CURRENT LAW

- 8-10 months

NEW LAW

- 8-19 months



“Absconding” condition for post-release supervision

For offenses committed on or after December 1, 2011



Statutory Absconding

- Regular, controlling condition: “Not to abscond, by willfully avoiding supervision or by willfully making the defendant’s whereabouts unknown to the supervising probation officer.”

-- G.S. 15A-1368.4(e)





Limit on Parole Commission Authority to Revoke

Offenses committed on or after December 1, 2011



Parole Commission Revocation Authority

- Parole Commission may only revoke for:
 - New criminal offense
 - Statutory absconding
 - Any violation by a sex offender
- Other violations: Return to prison for 3 months, then re-release
 - On fourth violation, return for remaining maximum



Special PRS Rules for Sex Offenders

- PRS supervision period:
 - All sex offenders: 60 months PRS
- Maximum sentence
 - Class B1-E: 120% of minimum, plus 60 months
 - Class F-I: 120% of minimum, plus 9 months
- 30-day “contempt of court” for refusal to accept or comply with PRS (effective June 27, 2011)



PRS for Certain DWIs

- Laura’s Law: New “Aggravated Level One” for 3+ grossly aggravating factors
- Punishment:
 - 36-month maximum
 - No parole, but 4 months of post-release supervision
 - PRS must include Continuous Alcohol Monitoring

Advanced Supervised Release (ASR)

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

Advanced Supervised Release (ASR)

- Early release program for certain inmates
- Eligible inmates released on “ASR date” if they complete “risk reduction incentives” in DOC
- Sentencing court and prosecutor are gatekeepers
 - No ASR unless court-ordered at sentencing
 - No ASR if prosecutor objects



ASR Eligibility

- Active sentences
 - Class D, I-III
 - Class E, I-IV
 - Class F, I-V
 - Class G, I-VI
 - Class H, I-VI

		I	II	III	IV	V	VI	
		18-24	24-30	30-36	36-42	42-48	48-54	54-60
A	1	18-24	24-30	30-36	36-42	42-48	48-54	54-60
	2	18-24	24-30	30-36	36-42	42-48	48-54	54-60
B	1	18-24	24-30	30-36	36-42	42-48	48-54	54-60
	2	18-24	24-30	30-36	36-42	42-48	48-54	54-60
C	1	18-24	24-30	30-36	36-42	42-48	48-54	54-60
	2	18-24	24-30	30-36	36-42	42-48	48-54	54-60
D	1	18-24	24-30	30-36	36-42	42-48	48-54	54-60
	2	18-24	24-30	30-36	36-42	42-48	48-54	54-60
E	1	18-24	24-30	30-36	36-42	42-48	48-54	54-60
	2	18-24	24-30	30-36	36-42	42-48	48-54	54-60
F	1	18-24	24-30	30-36	36-42	42-48	48-54	54-60
	2	18-24	24-30	30-36	36-42	42-48	48-54	54-60
G	1	18-24	24-30	30-36	36-42	42-48	48-54	54-60
	2	18-24	24-30	30-36	36-42	42-48	48-54	54-60
H	1	18-24	24-30	30-36	36-42	42-48	48-54	54-60
	2	18-24	24-30	30-36	36-42	42-48	48-54	54-60

Advanced Supervised Release (ASR)

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

After January 1, a Prior Record Level III defendant pleads guilty to a Class H felony. The plea agreement calls for a sentence at the top of the presumptive range and admission to the ASR program. What is the sentence, including the ASR date?

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

10-21 months
ASR date: 6 months



Advanced Supervised Release (ASR)

- Active sentences only, and only at sentencing
- Effective for pleas/findings of guilt on/after Jan. 1

Putting it all together...

Felony breaking or entering (Class H), committed after December 1, 2011. Prior record level III.

I/A
<i>10 - 12</i>
8 - 10
<i>6 - 8</i>

10 month minimum
21 month maximum
Suspended



The court imposes a 10-21 month sentence, suspended.

What conditions could the court impose to make it an intermediate punishment?

- Drug treatment court
- Special probation
- No special conditions

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

UNC

The court imposes a 10-21 month sentence, suspended.

What conditions could the court impose to make it an intermediate punishment?

- Drug treatment court
- Special probation
- No special conditions

UNC

The court imposes a 10-21 month sentence, suspended.

- Technical violation #1: 90-day CRV
- Technical violation #2: 90-day CRV
- Violation #3: Revocation
 - Credit for 6 months served during CRV periods
- In prison
- Release onto PRS when 9 months from maximum
- Technical violation #1: Return to prison for 3 months
- Technical violation #2: Return to prison for 3 months
- Violation #3: Return to prison for 3 months

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What if the offender says, "I'd just like to do my time"?

- Elect to serve provision repealed in 1997
- Offender will still have to do post-release supervision

Other Changes

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): JRA Changes

- Defendant eligibility narrowed:
 - No prior felonies (of any kind); no prior drug convictions
- Offense eligibility expanded:
 - 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, generally


- Ordinary probation rules apply.
 - State v. Burns, 171 N.C. App. 759 (2005)
- Violation hearings: County of origin makes sense

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



Place of Confinement

*Sentences imposed on or after
January 1, 2012*



Place of Confinement

- Misdemeanants:
 - 90 days or less: Local jail
 - 91 to 180 days (except DWI): Statewide Misdemeanant Confinement Program
 - 181 days or more: DOC
- All felons to DOC









Justice Reinvestment Essentials (S.L. 2011-192, as amended by S.L. 2011-412)

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 supervised release period is 5 years. For Class B1–E felonies requiring registration, the max sentence is 120% of the minimum + 60 months. S.L. 2011-307.
New Advanced Supervised Release (ASR) program created <i>Persons entering a plea or found guilty on or after January 1, 2012</i> <i>(Note that for Class F–I felonies, only offenses committed on or after December 1, 2011 receive post-release supervision)</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, if the probationer waives the right to a hearing and a lawyer, 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).

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.

**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)

**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.

Justice Reinvestment Resource Page

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

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.

Background. Justice Reinvestment is a national-level project of the nonprofit Council of State Governments (CSG) Justice Center. The goal of the project is to reduce state spending on corrections and to reinvest the savings in community programs that decrease crime and strengthen neighborhoods. The group, which is active in about 15 states, came to North Carolina in 2009. CSG analysts studied the North Carolina criminal justice system and made several key findings including:

- 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 CSG findings is available in the group's *Analysis and Policy Framework to Reduce Spending 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. 2011-307 \(SB 684\)](#)

[Other changes to probation \(including repeal of tolling\), S.L. 2011-62 \(HB 270\)](#)

Summary Chart. The chart available [here](#) summarizes the key provisions of the JRA.

Webinar. A free two-hour [webinar](#) provides an overview of the new law, including practical exercises. The webinar was prepared for and presented in collaboration with Community Corrections (probation) personnel from the N.C. Department of Public Safety, Division of Adult Correction. At present the webinar is not being offered for CLE/CJE credit.

Sentencing grids. The North Carolina Sentencing and Policy Advisory Commission prepares sentencing grids based on the tables of permissible punishments set out in Structured Sentencing. The latest version of the grid (and prior versions, which are necessary for offenses committed before December 1, 2011) are available [here](#).

North Carolina Criminal Law Blog posts related to Justice Reinvestment. The following aspects of the JRA and related legislative changes have been explored in posts on the [North Carolina Criminal Law Blog](#):

Overview of the law:

[The Justice Reinvestment Act: An Overview](#) (June 30, 2011)

Changes to front-end sentencing, including the addition of post-release supervision for all felons and the creation of a new early-release program called Advanced Supervised Release:

[Changes to Post-Release Supervision](#) (July 19, 2011)

[Changes to Post-Release Supervision for Sex Offenders](#) (July 21, 2011)

[Consolidation Across Effective Dates](#) (February 2, 2012)

[Advanced Supervised Release](#) (September 22, 2011)

[New Table of Maximum Permissible Punishments](#) (July 7, 2011)

Changes related to probation:

[Probation Tolling Repealed](#) (May 31, 2011)

[Quick Dips](#) (November 3, 2011)

[Delegated Authority in Probation Cases](#) (July 14, 2011)

[Community Punishment and Intermediate Punishment](#) (October 12, 2011)

[Confinement in Response to Violations \(CRV\) and Limits on Probation Revocation Authority](#) (October 25, 2011)

[FAQs About CRV](#) (February 8, 2012)

[Electing to Serve a Sentence after Justice Reinvestment](#) (January 18, 2012)

Changes related to how a sentence is served:

[Where to Serve a Sentence](#) (October 5, 2011)

[Jail Fees](#) (January 4, 2012)

Changes to habitual offender statutes, including the creation of a new habitual breaking and entering status offense:

[Changes to the Habitual Felon Law](#) (November 10, 2011)

[Habitual Breaking and Entering](#) (November 22, 2011)

The expansion of drug possession diversions under G.S. 90-96:

[The New G.S. 90-96](#) (November 29, 2011)

Contact. If you have questions about Justice Reinvestment, contact School of Government faculty member [Jamie Markham](#).