

# Justice Reinvestment: Essentials for District Court Judges

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- Intermediate punishment redefined**  
*Offenses committed on or after  
December 1, 2011*
- A sentence that places a defendant on supervised probation and may include drug treatment court, special probation, or other conditions of probation. An intermediate sentence no longer requires 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**  
*Offenses committed on or after  
December 1, 2011*
- A sentence to supervised or unsupervised probation or a fine that does not include an active punishment, drug treatment court, or special probation. G.S. 15A-1340.11(2).
- New set of “community and intermediate probation conditions”**  
*Offenses committed on or after  
December 1, 2011*
- The following conditions may be ordered in any Structured Sentencing case, community or intermediate (but they do not apply to cases sentenced under G.S. 20-179):
- Electronic house arrest
  - Community service
  - Jail confinement for 2–3 days, for no more than 6 days per month, during any three 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 per month.<sup>1</sup>
  - 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- Certain intermediate punishments repealed**  
*Offenses committed on or after  
December 1, 2011*
- The following intermediate punishments are repealed:
- Intensive supervision.
  - Residential program.
  - Day reporting center.
- Delegated authority expanded**  
*Offenses committed on or after  
December 1, 2011*
- In Structured Sentencing cases, unless the judge finds that delegation is not appropriate, a probation officer can add the following conditions of probation in response to a probationer’s failure to comply with one or more conditions imposed by the court or if the probationer is determined to be “high risk” based on a DOC risk assessment:
- 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).
- If the officer imposes one of the conditions listed above, the defendant can file a motion with the court to review the officer’s action.
- In response to a defendant’s failure to comply with one or more conditions imposed by the court, the probation officer may require jail confinement for 2–3 days, for no more than 6 days per month, during any 3 separate months. Before imposing confinement the officer must inform the defendant of his right to counsel and to a hearing on the alleged violation and then obtain a written waiver of those rights. G.S. 15A-1343.2(e), (f).
- 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).

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<sup>1</sup> This handout assumes House Bill 335, ratified by the General Assembly and presented to the governor on September 15, 2011, will become law. The bill makes several technical corrections to the Justice Reinvestment Act.

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

In response to probation violations other than the “commit no criminal offense” condition or the new “absconding” condition, the court may impose a period of 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
  - Any time spent in jail in advance of a hearing at which CRV is ordered must first be credited to the CRV period
  - CRV periods must run concurrently with one another
  - CRV is served where the defendant would have served an active sentence.
- G.S. 15A-1344(d2).

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

The court may revoke probation only for:

- Violations of the “commit no criminal offense” condition
  - Violations of the new “absconding” condition
  - Defendants who have previously received two CRV periods in the case.
- G.S. 15A-1344(a), -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);
- Possession of drug paraphernalia under G.S. 90-113.22; or
- Felony drug possession under G.S. 90-95(a)(3)

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 or federal controlled substance or paraphernalia offense.

G.S. 90-96(a1) provides for a discretionary discharge and dismissal of the same offenses listed in subsection (a). Subsection (a1) provides that for the purpose of evaluating whether the current offense is a first conviction or whether a defendant has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense can be considered.

**All felons get post-release supervision**  
*Offenses committed on or after December 1, 2011*

Class H and I felons who serve an active sentence will be released onto post-release supervision (PRS) 9 months before attaining their maximum sentence. They will be supervised in the community by the Division of Community Corrections for 9 months. Maximum sentences are increased by 9 months accordingly (e.g., a 4–5 month sentence will be a 4–14 month sentence). G.S. 15A-1368.2, -1340.17(d).

**New Advanced Supervised Release (ASR) program created**  
*Persons entering a plea or found guilty on or after January 1, 2012*

If the prosecutor does not object, the sentencing judge may, when imposing an active sentence for a Class H felony, order that the defendant be admitted to DOC’s ASR program. (Class I felons are ineligible for ASR.) 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 the defendant received a mitigated-range sentence ). Defendants ordered to the ASR program must be notified at sentencing that if they complete risk reduction incentives they will be released on the ASR date. G.S. 15A-1340.18.

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

Misdemeanors:

- 90 days or less: Local jail
  - 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
  - Sentences totaling 181 days or more: DOC
- Felons: DOC. G.S. 15A-1352; 148-32.1.