


# The Justice Reinvestment Act

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### 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.


**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)




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

<p><b>Felony maximum sentences increased; all felons get post-release supervision</b> <i>Offenses committed on or after December 1, 2011</i></p>	<p>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) Not for all felons is 5 years minimum +</p>	<p><b>Offenses committed on or after December 1, 2011</b></p>
<p><b>New Advanced Supervised Release (ASR) program created</b> <i>Persons entering a plea or found guilty on or after January 1, 2012 (Note that for Class F–I felonies, only offenses committed on or after December 1, 2011 receive post-release supervision)</i></p>	<p>If the prosecutor sentence, order d</p> <ul style="list-style-type: none"> <li>• Class D felonies</li> <li>• Class E felonies</li> <li>• Class F felonies</li> <li>• All Class G and H felonies</li> </ul> <p>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 (or 80% of</p>	
<p><b>Intermediate punishment redefined</b> <i>Offenses committed on or after December 1, 2011</i></p>	<p>A sentence that p treatment court, s “community and longer requires or EHA, drug treatm</p>	
<p><b>Community punishment redefined</b> <i>Offenses committed on or after December 1, 2011</i></p>	<p>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).</p>	
<p><b>New set of “community and intermediate probation conditions”</b></p>	<p>The following conditions may be ordered in any case, community or intermediate:</p> <ul style="list-style-type: none"> <li>• Electronic house arrest</li> </ul>	



# Key Provisions

- Post-release supervision for all felons
- Advanced Supervised Release created
- Judges’ authority to revoke probation limited
- More authority delegated to probation officers
- G.S. 90-96 conditional discharge made mandatory



# All felons get post-release supervision

## Offenses committed on or after December 1, 2011

\*\*\* Effective for Offenses Committed on or after 12/1/11 \*\*\*

MINIMUM AND MAXIMUM SENTENCES

The corresponding maximum sentence for each minimum sentence is shown in the tables below. In each column, the number to the left of the dash represents the minimum sentence (in months) and the number to the right of the dash represents the corresponding maximum sentence (in months).

FOR OFFENSE CLASSES B1 THROUGH F

15-30	92-75	89-119	126-164	163-208	200-252	237-297	274-341	311-386
16-32	13-76	90-120	127-163	164-209	201-254	238-298	275-342	312-387
17-33	94-77	91-121	128-166	165-210	202-255	239-299	276-343	313-388
18-34	15-78	92-122	129-167	166-211	203-256	240-300	277-344	314-389
19-35	16-80	93-124	130-168	167-213	204-257	241-302	278-346	315-390
20-36	17-81	94-125	131-170	168-214	205-258	242-303	279-347	316-392
21-38	18-82	95-126	132-171	169-215	206-260	243-304	280-348	317-393
22-39	19-83	96-128	133-172	170-216	207-261	244-305	281-350	318-394
23-40	20-84	97-129	134-173	171-218	208-262	245-306	282-351	319-395
24-41	61-86	98-130	135-174	172-219	209-263	246-308	283-352	320-396
25-42	62-87	99-131	136-176	173-220	210-264	247-309	284-353	321-398
26-44	63-88	100-132	137-177	174-221	211-266	248-310	285-354	322-399
27-45	64-89	101-134	138-178	175-222	212-267	249-311	286-356	323-400
28-46	65-90	102-135	139-179	176-224	213-268	250-312	287-357	324-401
29-47	66-91	103-136	140-180	177-225	214-269	251-314	288-358	325-402
30-48	67-93	104-137	141-182	178-226	215-270	252-315	289-359	326-404
31-50	68-94	105-138	142-183	179-227	216-271	253-316	290-360	327-405
32-51	69-95	106-140	143-184	180-228	217-273	254-317	291-362	328-406
33-52	70-96	107-141	144-185	181-230	218-274	255-318	292-363	329-407
34-53	71-98	108-142	145-186	182-231	219-275	256-320	293-364	330-408
35-54	72-99	109-143	146-188	183-232	220-276	257-321	294-365	331-410
36-56	73-100	110-144	147-189	184-233	221-278	258-322	295-366	332-411
37-57	74-101	111-146	148-190	185-234	222-279	259-323	296-368	333-412
38-58	75-102	112-147	149-191	186-236	223-280	260-324	297-369	334-413
39-59	76-104	113-148	150-192	187-237	224-281	261-326	298-370	335-414
40-60	77-105	114-149	151-194	188-238	225-282	262-327	299-371	336-416
41-62	78-106	115-150	152-195	189-239	226-284	263-328	300-372	337-417
42-63	79-107	116-152	153-196	190-240	227-285	264-329	301-374	338-418
43-64	80-108	117-153	154-197	191-242	228-286	265-330	302-375	339-419
44-65	81-110	118-154	155-198	192-243	229-287	266-332	303-376	
45-66	82-111	119-155	156-200	193-244	230-288	267-333	304-377	
46-68	83-112	120-156	157-201	194-245	231-290	268-334	305-378	
47-69	84-113	121-158	158-202	195-246	232-291	269-335	306-380	
48-70	85-114	122-159	159-203	196-248	233-292	270-336	307-381	
49-71	86-115	123-160	160-204	197-249	234-293	271-338	308-382	
50-72	87-117	124-161	161-206	198-250	235-294	272-339	309-383	
51-74	88-118	125-162	162-207	199-251	236-296	273-340	310-384	

To calculate a maximum sentence when the minimum sentence is 340 months or more, multiply the minimum sentence by 1.2 (i.e., 120%), round to the next highest month, and add 12. See G.S. 15A-1340.17(a).

See Offenses: To calculate a maximum sentence for a Class B1 through F felony that is subject to the registration requirements of G.S. Chapter 14, Article 27A, multiply the minimum sentence by 1.2 (i.e., 120%), round to the next highest month, and add 60. See G.S. 15A-1340.17(b).

FOR OFFENSE CLASSES F THROUGH I

3-13	8-20	13-25	18-31	23-37	28-43	33-49	38-55
4-14	9-20	14-26	19-32	24-38	29-44	34-50	39-56
5-15	10-21	15-27	20-33	25-39	30-45	35-51	40-57
6-17	11-23	16-29	21-35	26-41	31-47	36-53	41-59
7-18	12-24	17-30	22-36	27-42	32-48	37-54	



## Post-release supervision (PRS) for all felonies

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

## Post-release supervision (PRS) for all felonies

### MAXIMUM SENTENCES UNDER NEW LAW

- Class F-I: 120% of minimum, plus 9 months
- Class B1-E: 120% of minimum, plus 12
- Class B1-E: 120% of minimum, plus 60  
sex crimes

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

I/A
8 - 10
<b>6 - 8</b>
4 - 6

PRIOR LAW

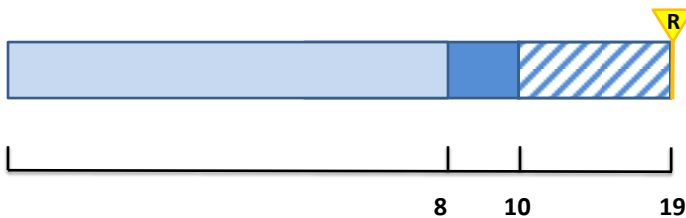
- 8-10 months

NEW LAW

- 8-19 months

## 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
  - Less earned time
  - 9-month period of supervised release



# Consecutive Felonies

- DAC will apply a “single sentence rule” under G.S. 15A-1354(b)
  - Sum all minimums
  - Sum all maximums, less 9 or 12 months (or 60 for Class B1-E sex offenders) for each “duplicate” PRS term

# Consecutive Felonies

Class H 8 – 19 months

Class H + 8 – 19

16 – 38 (sum of all mins and maxes)

- 9 (to remove duplicate PRS time)

16 – 29 months

# Post-Release Supervision

- A defendant cannot refuse PRS (15A-1368.2)
- Violations of PRS are heard by Parole Comm'n

# Advanced Supervised Release (ASR)

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

## Advanced Supervised Release (ASR)

- Early release program for certain defendants
- Possibility of release to post-release supervision on “ASR date” if “risk reduction incentives” completed in prison

## Advanced Supervised Release (ASR)

- ASR date determined based on regular sentence
  - If presumptive or aggravated, ASR date is the lowest mitigated minimum sentence in the defendant’s grid cell
  - If mitigated, ASR date is 80% of imposed minimum sentence



## Class H

### Prior Record Level III

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

For any presumptive or aggravated sentence, the ASR date is 6 months

*Example: 8-19 month sentence  
ASR date: 6 months*

For a mitigated sentence, the ASR date is 80% of the imposed minimum

*Example: 6-17 month sentence  
ASR date: 4.8 months*

## 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 0-1 Pts	II 2-5 Pts	III 6-9 Pts	IV 10-13 Pts	V 14-17 Pts	VI 18+ Pts	
A	Death or Life Without Parole						
B1	A	A	A	A	A	A	DISPOSITION
	240 - 240	276 - 245	317 - 267	365 - 255	420 - 245	480 - 245	Aggravated Range
	192 - 240	221 - 276	254 - 317	292 - 365	336 - 420	384 - 483	PRESUMPTIVE RANGE
	144 - 192	166 - 221	190 - 254	218 - 292	252 - 336	296 - 384	Mitigated Range
B2	A	A	A	A	A	A	
	157 - 196	180 - 225	207 - 258	238 - 297	273 - 342	314 - 393	
	128 - 187	144 - 180	165 - 207	190 - 238	219 - 273	251 - 314	
	96 - 128	108 - 144	124 - 165	143 - 190	162 - 219	192 - 251	
C	A	A	A	A	A	A	
	72 - 92	83 - 104	96 - 120	110 - 138	127 - 159	144 - 182	
	54 - 72	67 - 83	77 - 96	88 - 110	101 - 127	117 - 146	
	44 - 54	50 - 67	58 - 77	66 - 88	76 - 101	87 - 117	
D	A	A	A	A	A	A	
	64 - 80	73 - 92	84 - 105	97 - 121	111 - 139	128 - 160	
	51 - 64	59 - 73	67 - 84	78 - 97	89 - 111	103 - 128	
	40 - 51	44 - 59	51 - 67	58 - 78	67 - 89	77 - 103	
E	EA	EA	A	A	A	A	
	72 - 77	79 - 10	13 - 41	18 - 49	44 - 53	50 - 63	
	29 - 25	23 - 29	26 - 33	30 - 38	35 - 44	40 - 50	
	15 - 20	17 - 21	20 - 26	21 - 30	26 - 41	30 - 40	
F	EA	EA	EA	A	A	A	
	80 - 20	10 - 24	21 - 27	27 - 31	30 - 36	33 - 41	
	13 - 16	15 - 19	17 - 21	20 - 25	23 - 28	26 - 33	
	10 - 13	11 - 15	12 - 17	12 - 20	17 - 23	20 - 26	
G	EA	EA	EA	EA	A	A	
	13 - 16	14 - 18	17 - 21	19 - 24	22 - 27	21 - 31	
	10 - 13	12 - 14	13 - 17	15 - 19	17 - 22	20 - 25	
	8 - 10	9 - 12	10 - 13	11 - 14	11 - 17	13 - 20	
H	CEA	EA	EA	EA	EA	A	
	8 - 8	8 - 8	10 - 12	11 - 14	12 - 15	15 - 21	
	5 - 6	6 - 8	8 - 10	9 - 11	12 - 15	14 - 20	
	4 - 5	5 - 6	6 - 8	7 - 9	8 - 11	10 - 15	
I	C	EA	A	EA	EA	EA	
	6 - 8	6 - 8	6 - 8	8 - 10	9 - 11	10 - 12	
	4 - 6	4 - 6	5 - 6	6 - 8	7 - 9	8 - 10	
	3 - 4	3 - 4	4 - 5	4 - 6	5 - 7	6 - 8	

# Advanced Supervised Release (ASR)

- No ASR date unless court-ordered at sentencing
- No ASR if prosecutor objects
- Pleas and findings of guilt on/after January 1, 2012
  - Including pre-December 1, 2011 offense dates

# 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 statutory 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***

## Confinement in Response to Violation (CRV)

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



## Confinement in Response to Violation (CRV): Details

- CRV periods cannot be “stacked”
- Jail credit for time awaiting a violation hearing gets applied to CRV period first
- CRV is served where defendant would have served an active sentence

## Confinement in Response to Violation (CRV): Details

- Maximum of two CRV periods per case
- CRV periods should be served continuously (no “weekender” dunks)
- No express provision for appeal of CRV

## Grounds for Revocation

- Court may only revoke probation for “a violation of . . . **G.S. 15A-1343(b)(1)** [commit no criminal offense] or **G.S. 15A-1343(b)(3a)** [absconding].”

## Statutory Absconding

- “Not to abscond, by willfully avoiding supervision or by willfully making the defendant’s whereabouts unknown.”  
-- G.S. 15A-1343(b)(3a)
- Now a regular condition for offenses committed on or after December 1, 2011

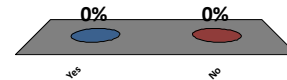
**In 2012, a defendant on probation for an offense that occurred before December 1, 2011, is alleged to have violated probation by absconding in early 2012**

Can the court revoke the defendant's probation?

1. Yes

★2. No

*This offender would not be subject to the new statutory absconding condition.*



## New Criminal Offense

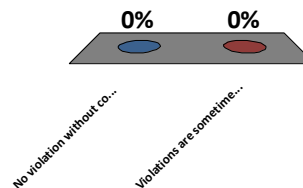
- “Commit no criminal offense in any jurisdiction”
- What does it mean to “commit” a criminal offense?
  - Can a pending charge be a probation violation?
  - Or must there be a conviction?

# 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)

## What is the practice in your district?

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





# Putting it all together...

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

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

8 month minimum  
19 month maximum  
Suspended

**The court imposes an 8-19 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 for 2-4 months (depending on earned time)
- Release onto PRS when 9 months from maximum

**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

## **The court imposes an 8-19 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 for 2-4 months (depending on earned time)
- 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



# Community and Intermediate Punishment

(Structured Sentencing cases only, not 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”

# 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
- 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

## **Delegated Authority**

*For offenses committed on or  
after December 1, 2011*

# Delegated Authority

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



STATE OF NORTH CAROLINA

County: \_\_\_\_\_ In the General Court of Justice  
 District  Superior Court Division

NOTE: (This form is to be used for misdemeanor offenses). Use AOC-CR-342 or AOC-CR-310 for DWI offenses.)

STATE VERSUS

Name of Defendant: \_\_\_\_\_

Face: \_\_\_\_\_ Sex: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Attorney For State: \_\_\_\_\_ Attorney For Defendant: \_\_\_\_\_

The defendant  pled guilty to  pursuant to Afford) to  was found guilty by the Court of  was found guilty by a jury of  pled no contest to \_\_\_\_\_

File No.(s)  OR \_\_\_\_\_ Offense Description \_\_\_\_\_ G.S. No. \_\_\_\_\_ CL \_\_\_\_\_

NOTE: Enter punishment class if different from underlying offense class (punishment class represents a status of enhancement). The Court has determined, pursuant to G.S. 15A-1340.20, the number of prior convictions to be \_\_\_\_\_ Level \_\_\_\_\_

1. The Court finds  (a) enhancement for  G.S. 90-95(e)(4) (drugs)  G.S. 14-3(c) (state crime)  by enhancement from required suspended sentence to Class 2 misdemeanor; G.S. 909. If in District Court, the Court found this issue beyond a reasonable doubt or the defendant pled guilty or no contest this finding is based on the jury's determination of this issue beyond a reasonable doubt or the defendant's plea.

2. The Court imposes mandatory punishment pursuant to G.S. 14-33(i) (assault in the presence of a minor).

3. The Court finds the above designated offense(s) is a reportable conviction under G.S. 14-208.6 and therefore a. imposes the special conditions of probation set forth on the attached AOC-CR-615, Side Two; b. makes the additional findings and orders on the attached AOC-CR-615, Side Two;

4. The Court finds the above-optional offense(s) involved the crime at that time:  physical or mental  or not; and therefore imposes the special conditions of probation set forth on the attached AOC-CR-615 with the victim.

5. The Court finds this is an offense involving assault or communicating a threat, and the defendant had a personal relationship as defined in G.S. 14-208.6.

6. The Court finds that the above designated offense(s) involved criminal street gang activity; G.S. 14-50.25.

The Court, having considered evidence, arguments of counsel, and statement of defendant, Orders that the above offenses, if more than one, and the defendant be imprisoned for a term of \_\_\_\_\_ days in the custody of the \_\_\_\_\_ N.C. DOC.  Sheriff of \_\_\_\_\_ County; \_\_\_\_\_ Other: \_\_\_\_\_

Misdemeanor Confinement Program (sentences 61-180 days for which a facility is not otherwise specified above, imposed on or after \_\_\_\_\_). This sentence shall run at the expiration of sentence imposed in file number \_\_\_\_\_.

The defendant shall be given credit for \_\_\_\_\_ days spent in confinement prior to the date of this judgment as a result of \_\_\_\_\_ to be applied toward the \_\_\_\_\_ sentence imposed above.

SUSPENSION OF SENTENCE

Subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on  supervised  unsupervised probation for \_\_\_\_\_ months.

1. The Court finds that a  longer  shorter period of probation is necessary than that which is specified in G.S. 15A-1343.2(i).

2. The Court finds that it is NOT appropriate to delegate to the Division of Community Corrections the authority to impose any of the requirements in G.S. 15A-1343.2(a) for community punishment or G.S. 15A-1343.2(i) for intermediate punishment.

3. This period of probation shall begin  when the defendant is released from incarceration  at the expiration of the sentence in the case below.

File No. \_\_\_\_\_ County \_\_\_\_\_ Court \_\_\_\_\_ Date \_\_\_\_\_

4. The defendant shall comply with the conditions set forth in file number \_\_\_\_\_.

5. The defendant shall provide a DNA sample pursuant to G.S. 15A-216.4 (AOC-CR-310 required).

MONETARY CONDITIONS

The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below, plus the probation suspension fee, pursuant to a schedule  determined by the probation officer  set out by the court as follows: \_\_\_\_\_

Costs	Fine	Restitution	Attorney's Fees	Comm. Service Fee	Enst. Fee	SBM Fee	Miscellaneous	Total Amount Due
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

\*See attached "Restitution Worksheet, Notice And Order (Initial Sentencing)," AOC-CR-611, which is incorporated by reference.

The Court finds just cause to waive costs.

Upon payment of the "Total Amount Due," the probation officer may transfer the defendant to unsupervised probation.

AOC-CR-604C Rev. 12/11  
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UNC SCHOOL OF GOVERNMENT

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
  - Electronic house arrest
  - Curfew with electronic monitoring
  - Educational/vocational skills development
  - SBM for covered sex offenders (intermediate only)
- Probationer can petition for court review of officer-imposed conditions

## JRA Delegated Authority

- In response to violation (not based on risk), officer can order “Quick dip”
  - 2-3 days, up to 6 days per month, in any three separate months
  - Must first get a waiver of counsel and hearing
  - Must be a violation of a court-ordered condition



## Post-JRA Confinement

- **Short-term jail confinement (“quick dip”):**
  - Up to 18 days, 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
- ***ALL COUNT FOR CREDIT UNDER G.S. 15-196.1***

## 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 misdemeanors
- 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)

STATE OF NORTH CAROLINA

County \_\_\_\_\_ In The General Court Of Justice  
 District  Superior Court Division

STATE VERSUS **AOC-CR-237** REQUEST FOR REPORT  
 Name Of Defendant (Type Or Print) \_\_\_\_\_ CONDITIONAL DISCHARGE

Drivers License No. \_\_\_\_\_ State \_\_\_\_\_ Race \_\_\_\_\_ Sex \_\_\_\_\_ Date Of Birth \_\_\_\_\_ Full Social Security No. \_\_\_\_\_ Age At Time Of Offense \_\_\_\_\_ G.S. 15A-151

Attorney For State  Def. Found Not Indigent  Def. Waived Attorney  Attorney For Defendant  Appointed  Retained Crt Rptr 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. 14-50.29.
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.  
 (Check either No. 3 or 4.)
3. The defendant has pled guilty to or been found guilty of the offense charged.
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 determine whether the defendant has a prior conditional discharge that would disqualify him/her for \_\_\_\_\_

Date \_\_\_\_\_

**“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 . . .**

UNC SCHOOL OF GOVERNMENT

## **G.S. 90-96(a1)**

- Same offense eligibility as subsection (a)
- Broader offender eligibility than subsection (a):
  - 7-year look-back period for prior convictions
- Discretionary with the trial judge

## **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
  - 1<sup>st</sup>/2<sup>nd</sup> 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

# 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

# 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 Act 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:

[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 on the Way](#) (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)

[The Statewide Misdemeanant Confinement Program](#) (February 23, 2012)

[Changes to the Single Sentence Rule \(how consecutive felony sentences are served\)](#) (March 1, 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.** School of Government faculty members [Jamie Markham](#) and [John Rubin](#) can field questions related to Justice Reinvestment.

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

<b>Felony maximum sentences increased; all felons get post-release supervision</b> <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.
<b>New Advanced Supervised Release (ASR) program created</b> <i>Persons entering a plea or found guilty on or after January 1, 2012 (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"><li>• Class D felonies, prior record levels I–III</li><li>• Class E felonies, prior record levels I–IV</li><li>• Class F felonies, prior record levels I–V</li><li>• All Class G and H felonies</li></ul> 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.
<b>Intermediate punishment redefined</b> <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).
<b>Community punishment redefined</b> <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).
<b>New set of “community and intermediate probation conditions” (Structured Sentencing cases only)</b> <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"><li>• Electronic house arrest</li><li>• Community service</li><li>• 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.</li><li>• Substance abuse assessment, monitoring, or treatment</li><li>• Participation in an educational or vocational skills development program</li><li>• Submission to satellite-based monitoring (if a covered sex offender). G.S. 15A-1343(a1).</li></ul>
<b>Certain intermediate punishments repealed</b> <i>Offenses committed on or after December 1, 2011</i>	The following intermediate punishments are repealed: <ul style="list-style-type: none"><li>• Intensive supervision</li><li>• Residential program</li><li>• Day reporting center</li></ul>
<b>Delegated authority expanded (Structured Sentencing cases only)</b> <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 (Supervision Level 1 or 2): <ul style="list-style-type: none"><li>• Perform up to 20 hours of community service (50 hours in intermediate cases)</li><li>• Submit to an electronically monitored curfew</li><li>• Submit to substance abuse assessment, monitoring, or treatment</li><li>• Participate in an educational or vocational skills development program</li><li>• Electronic house arrest</li><li>• Report to the probation officer at a frequency determined by the officer</li><li>• Submit to satellite-based monitoring if a covered sex offender (intermediate only).</li></ul> 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.

- If the time remaining on the defendant’s maximum 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.