Justice Reinvestment Statement

The Research Division of the North Carolina General Assembly reports North Carolina Session Law 2011-192, as amended by S.L. 2011-412 (HB 335), revises state criminal laws, criminal procedure laws, and probation statutes. The Act is based upon recommendations of The Council of State Governments Justice Center, working in conjunction with state agencies and officials. Known as the Justice Reinvestment Project, the working group received input from criminal justice practitioners and stakeholders from around the state, including superior and district court judges, district attorneys, defense attorneys, behavioral health treatment providers, family members, consumers, law enforcement officials, victim advocates, and probation officers. The goal of their work was to develop a statewide policy framework to reduce spending on corrections and reinvest in strategies to increase public safety.

Part I - Strengthen Probation Supervision:

- Redefines community punishment and intermediate punishment under the Structured Sentencing Act, and authorizes a sentencing court to impose one or more of the statutorily listed conditions. The change broadens the court's discretion by increasing the scope of probation conditions which may be ordered by the court.
- Enacts a new subsection listing probation conditions applicable to community or intermediate punishments. In addition to any special conditions of probation that may be ordered, the court may impose one or more of the following:
    - House arrest with electronic monitoring.
    - Special probation.
    - Community service.
    - Periods of confinement in a local confinement facility (up to six days per month, limited to consecutive two- or three-day periods, in any three months of the period of probation). When a defendant is on probation for multiple judgments, confinement periods imposed must run concurrently and may total no more than six days per month.
    - Substance abuse assessment, monitoring, or treatment.
    - Participation in an educational or vocational skills development program, including an evidence-based program.
    - Satellite monitoring based on sex offender statutes, if authorized by statute.
- Amends the statute delegating authority to the Department of Correction (Department) to require that offenders sentenced to community punishment and intermediate punishment comply with certain conditions. The Department must establish guidelines and procedures for imposition of the conditions, including a waiver of rights form if the Department wants to impose a period of confinement. The form must include waiver of a hearing before the court, assistance of counsel, and other procedural rights. The use of any of the conditions does not prevent the Department from utilizing the statutes which provide for revocation of probation.
- Requires the Department to use a validated risk assessment instrument in assessing each probationer for the purpose of determining:
    - The offender's risk of reoffending.
    - An appropriate supervision level based upon the determined risk of reoffending and the offender's criminogenic needs. Criminogenic needs generally include such things as who an offender hangs around with, the offenders' attitudes and values, lack of problem solving skills, substance use, employment status, and other attributes directly linked to criminal behavior.
- Amends the statute setting forth the Department's caseload goals. The Act uses the characterization of "high or moderate risk of re-arrest" offenders in lieu of offenders sentenced to

community or intermediate punishments. The goal states that a probation officer should have an average of no more than 60 "high or moderate risk of re-arrest" offenders.

Part I became effective December 1, 2011, and applies to people placed on probation based on offenses which occur on or after December 1, 2011. However, this section and the provisions of this Act requiring the Department to adopt a risk assessment instrument became effective June 23, 2011.

Part II – Post Release Supervision:

- Amends the statutes to include all felons in the post-release supervision program, except Class A and Class B1 prisoners sentenced to life imprisonment without parole. Previously, only Class B1 (non-life without parole) through Class E felons were included.
- Amends the post-release supervision release date, setting it at 12 months (was 9 months) before the maximum imposed prison term for Class B1 through Class E felons. For Class F through Class I felons, the post-supervision release date is set at 9 months before the maximum imposed prison term.
- Amends conditions of probation that can result in a revocation of post-release supervision to include a "non-absconding" condition. A probationer who willfully avoids supervision, or who willfully makes his or her whereabouts unknown to probation authorities, is considered to have absconded.
- Amends the statute authorizing imprisonment for violation of post-release supervision conditions. A person required to register on the sex offender registry, or a person who commits a new offense or absconds, is returned to prison to complete the maximum imposed term. Other felons are returned for three months, and may be returned for three months on two subsequent occasions. If the supervisee is a Class B1 through Class E felon, and has completed three periods of confinement of three months each, then a fourth violation can result in required completion of the maximum imposed prison term.

Part II became effective December 1, 2011, and applies to offenses committed on or after that date.

Part III – Breaking and Entering, Status Offense/Habitual Felon Statute, Penalty Change:

- Creates a new status offense for habitual breaking and entering and authorizes the district attorney to charge the offense in his or her discretion. The offense is punishable as a Class E felony. A defendant who has one or more prior convictions for any of the listed breaking and entering offenses is subject to separate indictments for the offense upon which he or she was arrested and for the habitual breaking and entering felony charge. For purposes of determining the number of prior convictions, a person with more than one felony conviction prior to the age of 18 will be considered to have only one prior felony conviction.
- Changes the penalty for a conviction under the state's Habitual Felon Statute and authorizes the district attorney to charge the offense in his or her discretion. The felon must be sentenced at a level that is four levels higher than the underlying felony for which the person was convicted, with a maximum sentence at the Class C felony level. Prior law set the penalty as a Class C felony.

Part III became effective December 1, 2011, and applies to any offense that occurs on or after that date, and that is the principal offense for a charge of the status offense of either habitual breaking and entering or habitual felon.

Part IV – Limit Time/Certain Violations of Probation:

- Adds a duty not to abscond to the regular conditions of probation, which are applicable to all offenders placed on probation. This provision became effective December 1, 2011, and applies to offenses committed on or after that date.

- Provides that the court may not revoke probation for violations of conditions of probation other than for a new criminal offense or for absconding (except as provided below), but the court may impose imprisonment for the other types of violations.
- Provides that if a probationer commits a violation of a condition of probation (other than a new crime or absconding, which can result in probation revocation), the court may impose a 90-day period of confinement if the person is on probation for a felony, or up to 90 days of confinement if the person is on probation for a misdemeanor. The defendant may receive only two periods of confinement under this subsection. The Act specifies how credits for confinement while awaiting a hearing are allocated.

Except as noted above, Part IV of this Act became effective December 1, 2011, and applies to probation violations occurring on or after that date.

Part V – Diversion Program/Felony Drug Possession/Advanced Supervised Release Program:

- Amends the controlled substance diversion program to include all first-time felony drug possession charges. The program provides for dismissal of charges upon successful completion of probation. Previously, the program was discretionary (court determined whether the defendant could be enrolled), and allowed only drug offense misdemeanants and people convicted of felony possession of less than one gram of cocaine. The Act also amends statutes providing for expunction of first-time drug possession offenses committed by people under the age of 21.
- Creates a procedure for a defendant, through completion of designated "risk reduction incentives," to be released on post-release supervision in advance of the term imposed under Structured Sentencing. The section:
  - Designates who is an eligible defendant. Eligibility is based upon the defendant's offense and prior record level.
  - Authorizes the Department to create incentives consisting of treatment, education, and rehabilitative programs designed to reduce the likelihood that the defendant will reoffend.
  - Provides that the court, without objection by the prosecutor, may order that the Department admit the defendant to the Advanced Supervised Release (ASR) program, and that the Department may admit only those offenders ordered into the program by the court. The court will first adjudge and impose an authorized sentence for the offense class, pursuant to the Structured Sentencing Act, which will include a minimum and maximum imposed term.
  - Provides for an ASR date, which is the minimum mitigated sentence for the offense at the offender's assigned prior record level. If the court utilizes the mitigated range in determining the sentence under structured sentencing, then the ASR date is 80% of the minimum term imposed by the court.
  - Provides that a prisoner released on the ASR date will be placed on post-release supervision. If the prisoner is returned to prison three times (a total of nine months), a subsequent violation will result in revocation of post-release status, and the prisoner must serve the remainder of the maximum imposed sentence.

Part V becomes effective January 1, 2012, and applies to people entering a plea or found guilty of an offense on or after that date.

Part VI – Refocus Criminal Justice Partnership Program:

- Repeals the Criminal Justice Partnership Program (CJPP), eliminates local CJPP boards, and creates a new Article provides for a program called "Treatment for Effective Community Supervision" and does the following:
- Establishes eligibility criteria for offenders, and identifies the priority population for funded programs as people convicted of felony drug offenses, who also have a high likelihood of reoffending and have a high to moderate need for substance abuse treatment.

- Provides for duties of the Department, including formulation of a recidivism reduction plan.
- Requires the Department to report annually on funds expended by contract and to provide an analysis of the participants and services.
- Establishes a state Community Corrections Advisory Board with the following duties and responsibilities:
  - Review the criteria for monitoring and evaluating community-based corrections programs.
  - Recommend community-based corrections program priorities.
  - Review minimum program standards, policies, and rules for community-based corrections programs.
  - Review the evaluation of programs.
  - Requires the North Carolina Sentencing Policy and Advisory Commission to report on recidivism rates for offenders on probation, parole, and post-release supervision who are program participants. The report is to be submitted by April 30 of each even-numbered year to the General Assembly and the Governor.
  - Establishes types of programs eligible for funding, to include substance abuse treatment services and cognitive behavioral programming.

Part VI became effective July 1, 2011. The Act authorizes the Department of Correction to enter into contracts with current program providers in the Criminal Justice Partnership Program on a sole-source basis during the 2011-2012 fiscal year.

Part VII – Misdemeanants to Serve Sentences in Jail:

- Authorizes the Department of Correction (Department) to enter into voluntary agreements with counties, to provide housing for misdemeanants serving periods of confinement of more than 90 days and up to 180 days. Costs of housing these prisoners, including care, supervision, transportation, medical, and any other related costs, are to be covered by state funds and not imposed as local costs. The agreements are not applicable to misdemeanants sentenced for violations of impaired driving laws. The Act also states the intent of the General Assembly that the Department contract with the North Carolina Sheriffs' Association to provide a service identifying space in local confinement facilities available for housing eligible misdemeanants.
- Provides that sentences requiring confinement for more than 180 days must be served in the custody of the Department; removes a provision that allowed sheriffs or the county board of commissioners to request the presiding judge to sentence felons to local confinement.
- Requires the North Carolina Sheriffs' Association, Inc., in consultation with the Department, to develop a plan for the Statewide Misdemeanant Confinement Program by September 1, 2011.
- Creates the Statewide Misdemeanant Confinement Fund, a non-reverting fund established within the Department. Moneys in the Fund may be used for the following:
  - Reimbursements by the Sheriffs' Association to counties for the costs of housing misdemeanants under the Program, including the care, supervision, and transportation of those misdemeanants.
  - Reimbursements to the Department for the cost of housing misdemeanants transferred to the Department, including the care, supervision, and transportation of those misdemeanants.
  - Payment to the Sheriffs' Association for administrative and operating expenses.
  - Payment to the Department for administrative and operating expenses.
  - Provides that 10% of monthly receipts collected and credited to the Statewide Misdemeanant Confinement Fund is to be transferred on a monthly basis to the Sheriffs' Association

for support of the Program and for administrative and operating expenses of the Association and its staff.

- Provides that 1% of the monthly receipts collected and credited to the Statewide Misdemeanant Confinement Fund are to be transferred on a monthly basis to the General Fund to be allocated to the Department for administrative and operating expenses for the Program.
- Requires the Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, and the Department of Correction to jointly conduct ongoing evaluations regarding implementation of this Act.
- Requires the North Carolina Sheriffs' Association to report on implementation of the program by October 1, 2011, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, and to report thereafter as requested by the Committee. The report must include relevant information collected monthly by the Sheriffs' Association regarding jail capacity and population in each county.
- Provides effective dates for court fees to conform to provisions in the Appropriations Act, and excludes costs and fees designated for remission to the Statewide Misdemeanant Confinement Fund from the collection assistance fee which supports the General Court of Justice.
- Amends the Appropriations Act to exempt the Statewide Misdemeanant Confinement Fund from a collection assistance fee normally allocated from court fees and designated for support of the General Court of Justice.

Provisions in Part VII of this Act relating to the fund and planning and contracting for the Statewide Misdemeanant Confinement Program became effective July 1, 2011; the remaining provisions become effective January 1, 2012.

Part VIII – Annual Report/Sentencing Commission Exemption:

- Requires the North Carolina Sentencing and Policy Advisory Commission and the Department to report on implementation and results of this Act to the Joint Legislative Correction, Crime Control, and Juvenile Justice Oversight Committee and to the chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, by April 15, 2012. Subsequent reports must be made annually by April 15 of each year.
- Provides the Sentencing Commission is not required to pay fees to the Department of Justice for information necessary to fulfilling its statutory obligations.

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