THE NORTH CAROLINA

Justice Reinvestment Act

James M. Markham
The School of Government at the University of North Carolina at Chapel Hill works to improve the lives of North Carolinians by engaging in practical scholarship that helps public officials and citizens understand and improve state and local government. Established in 1931 as the Institute of Government, the School provides educational, advisory, and research services for state and local governments. The School of Government is also home to a nationally ranked graduate program in public administration and specialized centers focused on information technology and environmental finance.

As the largest university-based local government training, advisory, and research organization in the United States, the School of Government offers up to 200 courses, webinars, and specialized conferences for more than 12,000 public officials each year. In addition, faculty members annually publish approximately fifty books, book chapters, bulletins, and other reference works related to state and local government. Each day that the General Assembly is in session, the School produces the Daily Bulletin, which reports on the day’s activities for members of the legislature and others who need to follow the course of legislation.

The Master of Public Administration Program is a full-time, two-year program that serves up to sixty students annually. It consistently ranks among the best public administration graduate programs in the country, particularly in city management. With courses ranging from public policy analysis to ethics and management, the program educates leaders for local, state, and federal governments and nonprofit organizations.

Operating support for the School of Government’s programs and activities comes from many sources, including state appropriations, local government membership dues, private contributions, publication sales, course fees, and service contracts. Visit www.sog.unc.edu or call 919.966.5381 for more information on the School’s courses, publications, programs, and services.

Michael R. Smith, Dean
Thomas H. Thornburg, Senior Associate Dean
Frayda S. Bluestein, Associate Dean for Faculty Development
L. Ellen Bradley, Associate Dean for Programs and Marketing
Todd A. Nicolet, Associate Dean for Operations
Ann Cary Simpson, Associate Dean for Development
Bradley G. Volk, Associate Dean for Administration

FACULTY
Whitney Afonso
Joseph S. Ferrell
Janet Mason
Jessica Smith
Gregory S. Allison
Alyson A. Grine
Christopher B. McLaughlin
Karl W. Smith
David N. Ammons
Norma Houston
Laurie L. Mesibov
Carl W. Stenberg III
Ann M. Anderson
Cheryl Daniels Howell
Kara A. Millonzi
John B. Stephens
A. Fleming Bell, II
Jeffrey A. Hughes
Jill D. Moore
Charles Szypszak
Maureen M. Berner
Willow S. Jacobson
Jonathan Q. Morgan
Shannon H. Tufts
Mark F. Botts
Robert P. Joyce
Ricardo S. Morse
Vaughn Upshaw
Michael Crowell
Kenneth L. Joyner
C. Tyler Mulligan
Aimee N. Wall
Leisha DeHart-Davis
Diane M. Juffras
David W. Owens
Jeffrey B. Welty
Shea Riggsbee Denning
Dona G. Lewandowski
William C. Rivenbark
Bradley G. Volk
James C. Drennan
Adam Lovelady
Dale J. Roenigk
Jessica Smith
Richard D. Ducker
James M. Markham
John Rubin

This project was supported by Grant No. 2010-RR-BX-K071 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice.

© 2012
School of Government
The University of North Carolina at Chapel Hill

Use of this publication for commercial purposes or without acknowledgment of its source is prohibited. Reproducing, distributing, or otherwise making available to a non-purchaser the entire publication, or a substantial portion of it, without express permission, is prohibited.

Printed in the United States of America
17 16 15 14 13 1 2 3 4 5
ISBN 978-1-56011-713-1

This publication is printed on permanent, acid-free paper in compliance with the North Carolina General Statutes.

Printed on recycled paper
# Contents

## Introduction

1

## Chapter 1

### Changes to Felony Sentencing

5

- **A. Post-Release Supervision for All Felons**

- **B. Changes to Sentencing and Post-Release Supervision for Sex Offenders**

- **C. Sentencing Multiple Convictions after the JRA**
  - Consecutive Sentences
  - Consolidation of Offenses

- **D. Post-Release Supervision after the JRA**
  - Absconding
  - Limits on Revocation of Post-Release Supervision
  - Tolling during Re-Imprisonment

- **E. Advanced Supervised Release (ASR)**
  - ASR Date
  - ASR Eligibility
  - ASR and Drug Trafficking
  - Risk Reduction Incentives
  - Revocation of ASR
  - Multiple Sentences

- **F. Drug Trafficking**

- **G. Changes to the Habitual Felon Laws**
  - Amendments to the Existing Habitual Felon Law
  - New Habitual Breaking and Entering Status Offense
    - Qualifying offenses
    - Procedure
    - Sentencing
Chapter 2

Changes to Probation 33

A. Community Punishment and Intermediate Punishment Redefined 33
   Intermediate Punishment 34
   Community Punishment 34

B. Repeal of Certain Intermediate Punishment Conditions 35
   Intensive Supervision 35
   Day-Reporting Center 36
   Residential Program 36

C. New “Community and Intermediate” Probation Conditions 37
   House Arrest with Electronic Monitoring 38
   Community Service 38
   Short-Term Jail Confinement 39
   Substance Abuse Assessment, Monitoring, or Treatment 42
   Continuous Alcohol Monitoring (CAM) 42
   Participation in an Educational or Vocational Skills Development Program 42
   Satellite-Based Monitoring 43

D. The Impact of Blending Community and Intermediate Punishment 44

E. Risk Assessment 46
   Risk Level 47
   Needs Level 47
   Supervision Level 48
   Consequences of the Supervision Level 48
   Caseload Goals 50

F. Delegated Authority 50
   Applicability 51
   Conditions a Probation Officer May Impose 52
   Circumstances in Which Probation Officers May Impose Conditions 53
   Quick Dips through Delegated Authority 55
   Constitutional Concerns 58
   Probation Officer’s Finding of Violation Not an Aggravating Factor 62

G. Absconding 62

H. Changes to the Court’s Authority to Revoke Probation 63
   No Revocation for Technical Violations 63
   Felony Confinement in Response to Violation (CRV) 64
   Misdemeanor CRV 64
   Terminal CRV Periods 65
   Reduction of a Sentence when Ordering CRV 67
   Revocation after Two CRV Periods 67
   CRV versus Special Probation 68
Chapter 3

Changes to G.S. 90-96 and Related Provisions 81

A. Eligibility 82
  Changes to G.S. 90-96(a) 82
    Offense eligibility 82
    Offender eligibility 82
    G.S 90-96(a) mandatory for certain defendants 83
  Changes to G.S. 90-96(a1) 85

B. Probation under G.S. 90-96 86
  G.S. 90-96(a) 87
  G.S. 90-96(a1) 88

C. Responses to Noncompliance in G.S. 90-96 Probation Cases 89
  Hearing Venue and Court 89
  Permissible Responses to Noncompliance 89

D. Changes to Related Expunction Provisions 91

E. Deferred Judgment as a Prior Conviction 92

Chapter 4

Changes to the Proper Place to Serve a Sentence 93

A. New Place-of-Confinement Rules under the JRA 94
  Felons 94
  Misdemeanants 94
  Effect of Consecutive Sentences 96
  Exceptions to the 90-Day-or-Less Misdemeanor Confinement Rules 97
  Imprisonment for Fines 97
Confinement in Response to Violation (CRV)  98
“Quick Dips”  98

B. The Statewide Misdemeanant Confinement Program (SMCP)  98
   Program Overview  99
   SMCP Funding Issues  99
   SMCP “Safekeepers”  101

C. Confinement Rules Not Changed by the JRA  102
   Special Probation (Split Sentences)  102
   Impaired Driving  102
   Work Release for Certain Misdemeanants  103

D. Sentence Reduction Credits  103

E. Correcting Place-of-Confinement Errors  104

Appendix A
Effective Dates of JRA Provisions  107

Appendix B

Appendix C
N.C. Session Law 2011-192, Justice Reinvestment Act  115

Appendix D
N.C. Session Law 2011-307, Sex Offender Supervision/Forensic Amendments  139

Appendix E

Appendix F
N.C. Session Law 2012-188, Justice Reinvestment Clarifications  153
Introduction

The Justice Reinvestment Act of 2011 (the JRA)\(^1\) made substantial changes to the law of sentencing and corrections in North Carolina—the most sweeping changes since the enactment of Structured Sentencing itself. This book summarizes and analyzes those changes, with an eye toward helping judicial officials, lawyers, corrections officials, and others do their work in a post-JRA world.

The legislation takes its name from the national-level Justice Reinvestment project spearheaded by the nonprofit Council of State Governments (CSG) Justice Center. The goal of the project is to encourage states to reduce prison populations and spending on corrections and then to reinvest the savings in community-based programs. More than fifteen states have taken part in the program as of this writing.

In 2009, CSG analysts began collecting data and focus group input on North Carolina’s criminal justice system. In early 2011 they issued a report of their findings and gave recommendations on how the justice reinvestment concept could be applied in the state. Among other things, they found that

- North Carolina’s prison population was projected to increase by 10 percent between 2010 and 2020,\(^2\)

---

2. More recent projections that take into account 2009 legislative changes and the prison system’s decision to award earned time more quickly estimated that the prison population would grow by less than 2 percent between 2011 and 2021. See
• most felons (all Class F–I offenders, who account for 85 percent of all felons) had no community supervision upon release from prison,
• more than half of new prison admissions were revoked probationers,
• community-based treatment programs were not allocated in an evidence-based way, and
• North Carolina was unusual in the number of misdemeanants housed in its prison system instead of local jails.³

With those findings in mind, the CSG group helped write House Bill 642, the Justice Reinvestment Act. The bill passed virtually unanimously and was signed into law by the governor as North Carolina Session Law (hereinafter S.L.) 2011-192 on June 23, 2011. Before most of the law came into effect, it was amended by S.L. 2011-412 (the 2011 Technical Corrections Act).⁴ Several parts of the JRA were amended again the following year by S.L. 2012-188, referred to hereinafter as the 2012 Clarifications Act.

Chapter 1 of this book discusses the changes the JRA made to the felony sentencing law in North Carolina. Those changes include the expansion of post-release supervision (PRS) to include all felons, the creation of a new early release program called Advanced Supervised Release, and modifications to the habitual felon law. The JRA did not make any changes to the minimum sentences on the front of the felony sentencing grid, but it did change the maximums on the back. Related legislation also changed the rules for maximum sentences for certain sex offenders. As a result, court and corrections officials should take care to use the proper sentencing grid for the offense in question—as always, dictated by the date of the offense.


4. Readers should note that the changes made by the 2011 Technical Corrections Act became law after LexisNexis issued the 2011 versions of North Carolina Criminal Law and Procedure (the unannotated collections of statutes related to criminal law, sometimes referred to as the “Red Book”) and the Annotated General Statutes of North Carolina. As a result, some of the statutes printed in those books do not reflect the final version of the law.
Chapter 2 covers changes related to probation, the most noteworthy of which is the substantial limitation on a judge’s authority to revoke probation. Chapter 2 also addresses the blending of community and intermediate punishment and the expansion of delegated authority, which gives probation officers more authority to add certain probation conditions, including short periods of jail confinement, without court action.

Chapter 3 discusses the expansion of the conditional discharge available for certain drug offenders under G.S. 90-96. Most notably, the JRA makes that discharge mandatory for consenting defendants, raising a variety of legal and logistical issues.

Chapter 4 of the book covers the changes the JRA made to the rules about the proper place to serve a sentence. In general, those changes were designed to transition most misdemeanants from the prison system to the local jails. To help the counties absorb the cost of that transfer, the legislation created the Statewide Misdemeanant Confinement Program, through which a county can be reimbursed for voluntarily agreeing to house certain inmates. Chapter 4 provides a full discussion of the post-JRA rules for where a sentence should be served, including a refresher on the place-of-confinement rules that were unaffected by the legislation.

Not all of the JRA’s many changes had the same effective date. Some portions were made effective for offenses committed on or after December 1, 2011 (for example, the expansion of post-release supervision). Some were made effective for probation violations occurring on or after December 1, 2011 (such as the limitation on the court’s authority to revoke probation). And some were made effective for sentences imposed on or after January 1, 2012 (for example, the changes to the place-of-confinement rules). More effective-date issues arose with the passage of the 2012 Clarifications Act, which was effective when it became law on July 16, 2012. Additionally, some of the changes apply only to cases sentenced under Structured Sentencing while others apply to sentences for impaired driving as well. And finally, some of the dates have unanticipated interactions with one another. For instance, a court may revoke for violations of the new statutory absconding condition for violations that occur on or after December 1, 2011, but only persons on probation for an offense that occurred on or after December 1, 2011, are actually subject to the revocation-eligible condition. These nuances require careful attention if the law is to be applied correctly. The summary
chart in Appendix A notes the effective date of each change and whether it applies in DWI cases.

The first step in following the law is often choosing the proper form to use. The JRA (and other recent legislation) required the creation of multiple versions of the boilerplate judgment forms issued by the Administrative Office of the Courts. In general, those forms adhere to the following convention:

- “A” series forms (for example, AOC-CR-603A) are for offenses committed before December 1, 2009.
- “B” series forms are for offenses committed from December 1, 2009, to November 30, 2011.
- “C” series forms are for offenses committed on or after December 1, 2011.

The entire forms library is available at the AOC’s webpage at www.nccourts.org/Forms/FormSearch.asp.

The JRA requires the Division of Adult Correction and the Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, jointly to conduct ongoing evaluations of the implementation of the new law. The Sentencing Commission must report on the law to the General Assembly by April 15 of each year. The first annual report is available on the Commission’s web page at www.nccourts.org/Courts/CRS/Councils/spac/Documents/JRIReports-2012.pdf.

One of the few things that is certain about the changes made by the JRA is that they will be subject to further amendment in the future. The appellate courts will also inevitably add an interpretive gloss, just as they have with Structured Sentencing over the course of nearly two decades. Updates to the law will be covered on the School of Government’s North Carolina Criminal Law Blog and collected on the School’s Justice Reinvestment Resource Page.

---