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## North Carolina Criminal Law Blog: The Justice Reinvestment Act: An Overview

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The Governor signed the Justice Reinvestment Act ([S.L. 2011-192](#) (H 642)) into law last week. It makes substantial changes to the law of sentencing and corrections in North Carolina—easily the most sweeping changes to Structured Sentencing since its passage in 1994. I'm working on a detailed bulletin on how our sentencing laws will operate after Justice Reinvestment, but I wanted through this post to give a brief summary of some of the major changes. Here's what the law does (with almost everything effective December 1, 2011):

**Lessens the distinction between community and intermediate punishment.** The law retains the community/intermediate/active ("C/I/A") framework on the sentencing grids but redefines what community and intermediate punishment mean. Under the new law, a community punishment will be one that includes supervised or unsupervised probation and any condition of probation except drug treatment court or special probation. The only requirement for a punishment to be intermediate under the new law is that it include supervised probation; no longer will the court be required to impose one of the six intermediate conditions (special probation, residential program, house arrest with electronic monitoring, intensive supervision, day reporting center, or drug treatment court) to make a sentence intermediate.

**Expands the authority delegated to probation officers, including authority to impose brief stints in jail.** Through delegated authority, probation officers will be empowered to impose new conditions of probation in both community and intermediate cases, including brief stints of jail confinement. The jail confinement condition is limited to 2- or 3-day periods that total no more than six days per month, and they may only be imposed during any three separate months of the period of probation. (So, the most jail time an officer could impose through the condition in a single probation case would be 18 days.) The officer can only impose the jail condition if the offender waives his or her right to a hearing and counsel. Unlike other delegated authority provisions, an offender ordered to jail through a probation officer's exercise of delegated authority has no statutory right to have the action reviewed by a court.

**Repeals intensive supervision.** Under current law, intensive supervision is the most commonly used intermediate sanction; it accounts for over half of all intermediate conditions imposed. The new law repeals the definition of intensive supervision and the statutory special condition referencing intensive supervision. The law also repeals the definitions of "day-reporting center" and "residential program."

**Adds an "absconding" condition.** The law makes it a regular condition of supervision for all probationers that they not "abscond, by willfully avoiding supervision or by willfully making [their] whereabouts unknown to the supervising probation officer." A similar provision is added for post-release supervisees.

**Limits a judge's authority to revoke probation.** Under the new law a court will only be allowed to revoke probation (that is, activate the entirety of a suspended sentence) for two specific types of violations: committing a new criminal offense and absconding. For other violations, the court will be limited to other existing non-revocation options (like imposition of a split sentence, for example) or a new response option allowing 90 days of confinement (or *up to* 90 days for misdemeanants). The court is not allowed to revoke probation for a non-absconding, non-new crime violation unless a defendant has previously received two periods of confinement under the new 90-day confinement provision.

**Expands post-release supervision to all felons.** Under current law, only Class B1 through Class E felons get post-release supervision. Under the new law, Class F through Class I felons will also be released on post-release supervision. The period of post-release supervision for Class B1 through Class E felons is increased from 9 months to 12 months, while the new period of supervision for Class F through Class I felons will be 9 months. (Except for sex offenders, who will all be subject to a five-year supervision period.) The law adds time to all the maximum sentences on the sentencing grid (an additional 3 months for the Class B1 through Class E felonies and an additional 9 months for the lesser felonies) to



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account for the fact that inmates will be released 12 and 9 months, respectively, before attaining their maximum. (The law does not, however, make any changes to the minimum sentences set out on the front of the sentencing grid.)

So, for example, what used to be a 6 to 8 month sentence for a Class H felony will now be a 6 to 17 month sentence. The inmate would be released from prison on the date equal to his maximum sentence less 9 months, less any earned time (so, sometime between 6 and 8 months), to serve 9 months on post-release supervision. If revoked, the inmate would have 9 months to serve.

**Limits the Post-Release Supervision and Parole Commission's authority to revoke post-release supervision.** In much the same way that the law limits a court's authority to revoke probation, it limits the Parole Commission's authority to revoke post-release supervision to supervisees who abscond or commit a new criminal offense, or who are sex offenders. Other supervisees may be returned to prison for only three months at a time, after which they must be released back onto post-release supervision unless they have completed service of the time remaining on their maximum imposed term.

**Amends the habitual felon law.** Under the new law habitualized felonies will be sentenced four classes higher than the principal felony for which the person was convicted, but never higher than Class C. That means a habitualized Class I felony would be sentenced as a Class E felony (which, depending on the defendant's prior record level, might for the first time raise the possibility of a probationary habitual felon sentence) and a habitualized Class H felony would be sentenced as a Class D felony. Any more serious felony would be sentenced as a Class C felony, just as under current law.

**Adds a new "habitual breaking and entering status offense."** The law creates a new habitual B&E "status offense" that a prosecutor may, in his or her discretion, charge upon a person's second conviction for a felony B&E (defined to include first- and second-degree burglary, breaking out of a dwelling house burglary, breaking or entering buildings generally, breaking or entering a place of worship, or any substantially similar crime from another jurisdiction). If habitualized, that second strike is sentenced as a Class E felony.

**Makes G.S. 90-96 probation mandatory for eligible defendants.** The law changes the eligibility criteria for discharge and dismissal of certain drug crimes under G.S. 90-96(a). On the one hand it limits eligibility by excluding defendants with prior felony convictions of any kind. On the other hand it expands eligibility by allowing discharge and dismissal of any felony drug possession crime under G.S. 90-95(a)(3), regardless of substance or amount. Most significantly, the law then provides that any eligible defendant "shall" (replacing "may") be placed on probation without entering judgment of guilt. The law makes parallel changes to the expunction provisions set out in G.S. 15A-145.2.

**Allows for "Advanced Supervised Release."** Certain felons convicted of Class D through Class H offenses will be eligible for early release from a prison term under a new statutory provision entitled "Advanced Supervised Release" or ASR. Regardless of the actual sentence imposed, the offender will have an opportunity to be released from prison upon serving the shortest possible mitigated sentence he or she could have received for the offense (or 80 percent of the imposed minimum if the defendant received a sentence from the mitigated range in the first place). To get released at the ASR date the inmate must complete risk reduction incentives created by DOC, such as treatment, education, and rehabilitation programs (or be unable to complete such incentives by no fault of his own or her own). The law appears to limit eligibility for ASR to defendants approved for risk reduction incentives by the sentencing judge, without objection from the prosecutor.

**Eliminates the Criminal Justice Partnership Program (CJPP).** The law repeals CJPP and replaces it with the centrally-administered Treatment for Effective Community Supervision program.

**Requires most misdemeanants to serve their sentences in jail.** The new law requires that all felony sentences and misdemeanor sentences requiring confinement of more than 180 days be served in DOC. The law retains the rule that sentences of 90 days or less should be to the local jail. The law establishes a new program for misdemeanants other than impaired drivers with sentences that require confinement of 91 to 180 days. Those inmates will be ordered to confinement pursuant to a new "Statewide Misdemeanor Confinement Program" administered by the North Carolina Sheriffs' Association. The Sheriffs' Association will place covered inmates in jails that have volunteered space for the program. The costs of housing and caring for covered misdemeanants will be paid by a statewide fund pursuant to the terms of a contract between DOC and the Sheriffs' Association.

The rules for service of a DWI sentence continue unchanged. Under G.S. 20-176(c1), a DWI sentence must be served in



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the jail unless the defendant has previously been jailed for a Chapter 20 violation, or unless it is the defendant's second or subsequent DWI.

I hope you'll take a look at the law and post comments with your thoughts.