GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H **1**

HOUSE BILL 277*

Short Title: Structured Sentencing-2. (Public)

Sponsors: Representatives Barnes and Redwine.

Referred to: Judiciary III.

February 25, 1993

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR STRUCTURED SENTENCING IN NORTH CAROLINA CONSISTENT WITH THE STANDARD OPERATING CAPACITY OF THE DEPARTMENT OF CORRECTION AND LOCAL CONFINEMENT FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 15A of the General Statutes is amended by adding a new Article 81B to read:

"**ARTICLE 81B.**

"**STRUCTURED SENTENCING OF PERSONS CONVICTED OF CRIMES.**

"**PART 1. GENERAL PROVISIONS.**

"**§ 15A-1340.10. Applicability of structured sentencing.**

This Article applies to criminal offenses in North Carolina, other than impaired driving under G.S. 20-138.1, that occur on or after January 1, 1994.

"**§ 15A-1340.11. Definitions.**

The following definitions apply to this Article:

(1) Active punishment. – A sentence in a criminal case that requires an offender to serve a sentence of imprisonment, and is not suspended. Special probation, as defined in G.S. 15A-1351, is not an active punishment.

(2) Community punishment. – A sentence in a criminal case that does not include an active punishment or an intermediate punishment.

(3) Day-reporting center. – A facility to which offenders are required, as a condition of probation, to report on a daily or other regular basis at

specified times for a specified length of time to participate in activities such as counseling, treatment, social skills training, or employment training.

(4) Electronic monitoring. – A condition of probation in which the offender is required to remain in one or more specified places for a specified period or periods each day, and in which the offender must wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(5) Intensive probation. – Probation that requires the offender to submit to supervision by officers assigned to the Intensive Probation Program established pursuant to G.S. 143B-262(c), and to comply with the rules adopted for that program.

(6) Intermediate punishment. – A sentence in a criminal case that places an offender on supervised probation and includes at least one of the following conditions:

a. Special probation as defined in G.S. 15A-1351(a);
b. Assignment to a residential program;
c. Electronic monitoring;
d. Intensive probation; or
e. Assignment to a day-reporting center.

In addition, a sentence to regular supervised probation imposed pursuant to a community penalties plan as defined in G.S. 7A-771(2) is an intermediate punishment, regardless of whether any of the above conditions is imposed, if the plan is accepted by the court and the plan does not include active punishment.

(7) Prior conviction. – A person has a prior conviction when, on the date a criminal judgment is entered, the person being sentenced has been previously convicted of a crime:

a. In the district court, and the person has not given notice of appeal and the time for appeal has expired; or
b. In the superior court, regardless of whether the conviction is on appeal to the appellate division; or
c. In the courts of the United States, another state, the armed services of the United States, or another county, regardless of whether the offense would be a crime if it occurred in North Carolina,

regardless of whether the crime was committed before or after the effective date of this Article.

(8) Residential program. – A program in which the offender, as a condition of probation, is required to reside in a facility for a specified period and to participate in activities such as counseling, treatment, social skills training, or employment training, conducted at the residential facility or at other specified locations.

"**§ 15A-1340.12. Purposes of sentencing.**

The primary purposes of sentencing a person convicted of a crime are to impose a punishment commensurate with the injury the offense has caused, taking into account factors that may diminish or increase the offender's culpability; to protect the public by restraining offenders; to assist the offender toward rehabilitation and restoration to the community as a lawful citizen; and to provide a general deterrent to criminal behavior.

PART 2. FELONY SENTENCING.

"**§ 15A-1340.13. Procedure and incidents of sentence of imprisonment for felonies.**

(a) Application to Felonies Only. – This Part applies to sentences imposed for felony convictions.

(b) Procedure Generally; Requirements of Judgment; Kinds of Sentences. – Before imposing a sentence, the court must determine the prior record level for the offender pursuant to G.S. 15A-1340.14. The sentence must contain a sentence disposition specified for the class of offense and prior record level, and its minimum term of imprisonment must be within the range specified for the class of offense and prior record level, unless applicable statutes require or authorize another minimum sentence of imprisonment. The kinds of sentence dispositions are active punishment, intermediate punishment, and community punishment.

(c) Minimum and Maximum Term. – The judgment of the court must contain a minimum term of imprisonment that is consistent with the class of offense for which the sentence is being imposed and with the prior record level for the offender. The maximum term of imprisonment applicable to each minimum term of imprisonment is, unless otherwise provided, as specified in G.S. 1340.17. The maximum term must be specified in the judgment of the court.

(d) Service of Minimum Required; Earned Time Authorization. – An offender sentenced to a sentence of imprisonment that is activated must serve the minimum term imposed. The maximum term may be reduced to, but not below, the minimum term by earned time awarded to an offender by the Department of Correction or custodian of the local confinement facility, pursuant to rules adopted in accordance with law.

(e) Deviation from Sentence Ranges for Aggravation and Mitigation; No Sentence Dispositional Deviation Allowed. – The court may deviate from the presumptive range of minimum sentences of imprisonment specified for a class of offense and prior record level if it finds, pursuant to G.S. 15A-1340.16, that aggravating or mitigating circumstances support such a deviation. The amount of the deviation is in the court's discretion, subject to the limits specified in the class of offense and prior record level for mitigated and aggravated punishment. Deviations for aggravated or mitigated punishment are allowed only in the ranges of minimum and maximum sentences of imprisonment, and not in the sentence dispositions specified for the class of offense and prior record level, unless a statute specifically authorizes a sentence dispositional deviation.

(f) Suspension of Sentence. – Unless otherwise provided, the court may not suspend the sentence of imprisonment if the class of offense and prior record level does not permit community or intermediate punishment as a sentence disposition. The court must suspend the sentence of imprisonment if the class of offense and prior record level requires community or intermediate punishment as a sentence disposition. The court

may suspend the sentence of imprisonment if the class of offense and prior record level authorizes, but does not require, active punishment as a sentence disposition.

"**§ 15A-1340.14. Prior record level for felony sentencing.**

(a) Generally. – The prior record level of a felony offender is determined by calculating the sum of the points assigned to each of the offender's prior convictions that the court finds to have been proved in accordance with this section.

(b) Points. – Points are assigned as follows:

(1) For each prior felony Class A conviction, 10 points.

(2) For each prior felony Class B, C, or D conviction, 6 points.

(3) For each prior felony Class E, F, or G conviction, 4 points.

(4) For each prior felony Class H or I conviction, 2 points.

(5) For each prior misdemeanor conviction, 1 point.

(6) If all the elements of the present offense are included in the prior offense, 1 point.

(7) If the offense was committed while the offender was on probation or parole, or while the offender was serving a sentence of imprisonment, or after the offender escaped from a correctional institution while serving a sentence of imprisonment, 1 point.

(c) Prior Record Levels for Felony Sentencing. – Levels are:

(1) Level I – 0 points.

(2) Level II – At least 1, but not more than 4 points.

(3) Level III – At least 5, but not more than 8 points.

(4) Level IV – At least 9, but not more than 14 points.

(5) Level V – At least 15, but not more than 18 points.

(6) Level VI – At least 19 points.

In determining the prior record level, the classification of a prior offense is the classification assigned to that offense at the time the offense for which the offender is being sentenced is committed.

(d) Multiple Prior Convictions Obtained in One Court Week. – For purposes of determining the prior record level, if an offender is convicted of more than one offense in a single court during one calendar week, only the conviction for the offense with the highest point total is used.

(e) Classification of Prior Convictions From Other Jurisdictions. – Except as otherwise provided in this subsection, a conviction occurring in a jurisdiction other than North Carolina is classified as a Class I felony if the jurisdiction in which the offense occurred classifies the offense as a felony, or is classified as a misdemeanor if the jurisdiction in which the offense occurred classifies the offense as a misdemeanor. If the offender proves by the preponderance of the evidence that an offense classified as a felony in the other jurisdiction is substantially similar to an offense that is a misdemeanor in North Carolina, the conviction is treated as a misdemeanor for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense is substantially similar to an offense in North Carolina classified higher than a Class I felony, the conviction is treated as the higher class of felony for assigning prior record level points.

(f) Proof of Prior Convictions. – A prior conviction may be proved by:
(1) Stipulation of the parties;
(2) An original or copy of the court record of the prior conviction;
(3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts;
(4) Oral testimony of a party with personal knowledge of the relevant facts of the conviction; or
(5) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is **prima facie** evidence that the offender named therein is the same as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, 'a copy' includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the offender's full record. Evidence adduced by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, either the State or the offender is entitled to a continuance of the sentencing hearing. If asked by the defendant in compliance with G.S. 15A-903, the prosecutor must furnish the defendant's prior criminal record within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate.

"**§ 15A-1340.15. Multiple convictions.**

(a) Consecutive Sentences. – This Article does not prohibit the imposition of consecutive sentences. Unless otherwise specified, all sentences of imprisonment run concurrently with any other sentences of imprisonment.

(b) Consolidation of Sentences. – If an offender is convicted of more than one offense at the same time, the court may consolidate the offenses for judgment and impose a single judgment for the consolidated offenses. The judgment must contain a sentence disposition specified for the class of offense and prior record level of the most serious offense, and its minimum sentence of imprisonment must be within the ranges specified for that class of offense and prior record level, unless applicable statutes require or authorize another minimum sentence of imprisonment.

"**§ 15A-1340.16. Aggravated and mitigated sentences.**

(a) Generally, Burden of Proof. – The court shall consider evidence of aggravating or mitigating factors present in the offense which make an aggravated or mitigated sentence appropriate, but the decision to depart from the presumptive range is in the discretion of the court. The State bears the burden of proving by a preponderance

of the evidence that an aggravating factor exists and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(b) When Aggravated or Mitigated Sentence Allowed. – If the court finds that aggravating or mitigating factors exist, it may depart from the presumptive range of sentences specified in G.S. 15A-1340.17(c)(2). If the court finds that aggravating factors are present and are sufficient to outweigh any mitigating factors that are present, it may impose a sentence that is permitted by the aggravated range described in G.S. 15A-1340.17(c)(4). If the court finds that mitigating factors are present and are sufficient to outweigh any aggravating factors that are present, it may impose a sentence that is permitted by the mitigated range described in G.S. 15A-1340.17(c)(3).

(c) Written Findings; When Required. – The court shall make findings of the aggravating and mitigating factors present in the offense only if, in its discretion, it departs from the presumptive range of sentences specified in G.S. 15A-1340.17(c)(2). Findings shall be in writing. The requirement to make findings in order to depart from the presumptive range applies regardless of whether the sentence of imprisonment is activated or suspended.

(d) Aggravating Factors. – The following are aggravating factors:

(1) The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.

(2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.

(3) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(4) The defendant was hired or paid to commit the offense.

(5) The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(6) The offense was committed against a present or former: law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duties.

(7) The offense was especially heinous, atrocious, or cruel.

(8) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

(9) The defendant held public office at the time of the offense and the offense related to the conduct of the office.

(10) The defendant was armed with or used a deadly weapon at the time of the crime.

(11) The victim was very young, or very old, or mentally or physically infirm.

(12) The defendant committed the offense while on pretrial release on another charge.

(13) The defendant involved a person under the age of 16 in the commission of the crime.

(14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.

(15) The defendant took advantage of a position of trust or confidence to commit the offense.

(16) The offense involved the sale or delivery of a controlled substance to a minor.

(17) The offense was committed because of the race, color, religion, nationality, or country of origin of another person.

(18) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.

(19) The defendant has been previously adjudicated delinquent in juvenile court.

(20) The serious injury inflicted upon the victim is permanent and debilitating.

(21) Any other aggravating factor reasonably related to the purposes of sentencing.

Evidence necessary to prove an element of the offense may not be used to prove any factor in aggravation, and the same item of evidence may not be used to prove more than one factor in aggravation.

The judge may not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial.

(e) Mitigating Factors. – The following are mitigating factors:

(1) The defendant committed the offense under duress, coercion, threat, or compulsion which was insufficient to constitute a defense but significantly reduced his culpability.

(2) The defendant was a passive participant or played a minor role in the commission of the offense.

(3) The defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced his culpability for the offense.

(4) The defendant's age, immaturity, or his limited mental capacity at the time of commission of the offense significantly reduced his culpability for the offense.

(5) The defendant has made substantial or full restitution to the victim.

(6) The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct or consented to it.

(7) The defendant aided in the apprehension of another felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.

(8) The defendant acted under strong provocation, or the relationship between the defendant and the victim was otherwise extenuating.

(9) The defendant could not reasonably foresee that his conduct would cause or threaten serious bodily harm or fear, or the defendant exercised caution to avoid such consequences.

(10) The defendant reasonably believed that his conduct was legal.

(11) Prior to arrest or at an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.

(12) The defendant has been a person of good character or has had a good reputation in the community in which he lives.

(13) The defendant is a minor and has reliable supervision available.

(14) The defendant has been honorably discharged from the United States armed services.

(15) The defendant has accepted responsibility for his criminal conduct.

(16) Any other mitigating factor reasonably related to purposes of sentences.

(f) Proof of Juvenile Adjudication. – A juvenile adjudication used to establish the aggravating factor in (d)(19) may only be proved by certified copy of the records of the court in which the adjudication was obtained.

"**§ 15A-1340.17. Punishment limits for each class of offense and prior record level.**

(a) Offense Classification; Default Classifications. – The offense classification is as specified in the offense for which the sentence is being imposed. If the offense is a felony for which there is no classification, it is a Class I felony.

(b) Fines. – Any judgment that includes a sentence of imprisonment may also include a fine. If a community punishment is authorized, the judgment may consist of a fine only. Additionally, when the defendant is other than an individual, the judgment may consist of a fine only. Unless otherwise provided, the amount of the fine is in the discretion of the court.

(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart Described. – The authorized punishment for each class of offense and prior record level is as specified in the chart below. Prior record levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offense are indicated by the letters placed vertically on the left side of the chart. Each cell on the chart contains the following components:

(1) A sentence disposition or dispositions: 'C' indicates that a community punishment is authorized; 'I' indicates that an intermediate punishment is authorized; and 'A' indicates that an active punishment is authorized.

(2) A presumptive range of minimum durations, if the sentence of imprisonment is neither aggravated or mitigated; any minimum term of imprisonment in that range is permitted unless the court finds pursuant

to G.S. 15A-1340.16 that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.

(3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the mitigated range is permitted. The mitigated range is the lower of the three ranges in the cell.

(4) An aggravated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the aggravated range is permitted. The aggravated range is the higher of the three ranges in the cell.

PRIOR RECORD LEVEL

	I	II	III	IV	V	VI	
	0 Pts	1-4 Pts	5-8 Pts	9-14 Pts	15-18 Pts	19+ Pts	
A	Mandatory Life or Death as Established by Statute						
	A	A	A	A	A	A	DISPOSITION
	135-169	163-204	190-238	216-270	243-304	270-338	Aggravated
B	108-135	130-163	152-190	173-216	194-243	216-270	PRESUMPTIVE
	81-108	98-130	114-152	130-173	146-194	162-216	Mitigated
	A	A	A	A	A	A	DISPOSITION
	63-79	86-108	100-125	115-144	130-162	145-181	Aggravated
C	50-63	69-86	80-100	92-115	104-130	116-145	PRESUMPTIVE
	38-50	52-69	60-80	69-92	78-104	87-116	Mitigated
	A	A	A	A	A	A	DISPOSITION
	55-69	66-82	89-111	101-126	115-144	126-158	Aggravated
D	44-55	53-66	71-89	81-101	92-115	101-126	PRESUMPTIVE
	33-44	40-53	53-71	61-81	69-92	76-101	Mitigated
	A/I	A/IA	A	A	A		DISPOSITION
	25-31	29-36	34-42	46-58	53-66	59-74	Aggravated
E	20-25	23-29	27-34	37-46	42-53	47-59	PRESUMPTIVE
	15-20	17-23	20-27	28-37	32-42	35-47	Mitigated

		I/A	I/A	A/I	A	A	A	DISPOSITION
	16-20	19-24		21-26	25-31	34-42	39-49	Aggravated
F	13-16	15-19		17-21	20-25	27-34	31-39	PRESUMPTIVE
	10-13	11-15		13-17	15-20	20-27	23-31	Mitigated

		I/A	I/A	A/I	A/I	A	A	DISPOSITION
	13-16	15-19		16-20	20-25	21-26	29-36	Aggravated
G	10-13	12-15		13-16	16-20	17-21	23-29	PRESUMPTIVE
	8-10	9-12		10-13	12-16	13-17	17-23	Mitigated

	C/I	I	I/A	I/A	A/I	A		DISPOSITION
	6-8	8-10		10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8		8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16		Mitigated

		C	C/I	I	I/A	I/A	A/I	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12		Aggravated
I	4-6	4-6		5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8		Mitigated

(d) Maximum Sentences Specified. – Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c), expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below. The first figure in each cell in the table is the minimum term and the second is the maximum term.

4-5	5-6	6-8	7-9	8-10	9-11	10-12	11-14
12-15	13-16	14-17	15-18	16-20	17-21	18-22	19-23
20-24	21-26	22-27	23-28	24-29	25-30	26-32	27-33
28-34	29-35	30-36	31-38	32-39	33-40	34-41	35-42
36-44	37-45	38-46	39-47	40-48	41-50	42-51	43-52
44-53	45-54	46-56	47-57	48-58	49-59	50-60	51-62
52-63	53-64	54-65	55-66	56-68	57-69	58-70	59-71
60-72	61-74	62-75	63-76	64-77	65-78	66-80	67-81
68-82	69-83	70-84	71-86	72-87	73-88	74-89	75-90
76-92	77-93	78-94	79-95	80-96	81-98	82-99	83-100
84-101	85-102	86-104	87-105	88-106	89-107	90-108	91-110
92-111	93-112	94-113	95-114	96-116	97-117	98-118	99-119
100-120	101-122	102-124	103-124	104-125	105-126	106-128	107-129
108-130	109-131	110-132	111-134	112-135	113-136	114-137	115-138
116-140	117-141	118-142	119-143	120-144	121-146	122-147	123-148
124-149	125-150	126-152	127-153	128-154	129-155	130-156	131-158
132-159	133-160	134-161	135-162	136-164	137-165	138-166	139-167

140-168 141-170 142-171 143-172 144-173 145-174 146-176 147-177
148-178 149-179 150-180 151-182 152-183 153-184 154-185 155-186
156-188 157-189 158-190 159-191 160-192 161-194 162-195 163-196
164-197 165-198 166-200 167-201 168-202 169-203 170-204 171-206
172-207 173-208 174-209 175-210 176-212 177-213 178-214 179-215
180-216 181-218 182-219 183-220 184-221 185-222 186-224 187-225
188-226 189-227 190-228 191-230 192-231 193-232 194-233 195-234
196-236 197-237 198-238 199-239 200-240 201-242 202-243 203-244
204-245 205-246 206-248 207-249 208-250 209-251 210-252 211-254
212-255 213-256 214-257 215-258 216-260 217-261 218-262 219-263
220-264 221-266 222-267 223-268 224-269 225-270 226-272 227-273
228-274 229-275 230-276 231-278 232-279 233-280 234-281 235-282
236-284 237-285 238-286 239-287 240-288 241-290 242-291 243-292
244-293 245-294 246-296 247-297 248-298 249-299 250-300 251-302
252-303 253-304 254-305 255-306 256-308 257-309 258-310 259-311
260-312 261-314 262-315 263-316 264-317 265-318 266-320 267-321
268-322 269-323 270-324 271-326 272-327 273-328 274-329 275-330
276-332 277-333 278-334 279-335 280-336 281-338 282-339 283-340
284-341 285-342 286-344 287-345 288-346 289-347 290-348 291-350
292-351 293-352 294-353 295-354 296-356 297-357 298-358 299-359
300-360 301-362 302-363 303-364 304-365 305-366 306-368 307-369
308-370 309-371 310-372 311-374 312-375 313-376 314-377 315-378
316-380 317-381 318-382 319-383 320-384 321-386 322-387 323-388
324-389 325-390 326-392 327-393 328-394 329-395 330-396 331-398
332-399 333-400 334-401 335-402 336-404 337-405 338-406 339-407

PART 3. MISDEMEANOR SENTENCING.

"**§ 15A-1340.20. Procedure and incidents of sentence of imprisonment for misdemeanors.**

(a) Application to Misdemeanors Only. – This Part applies to sentences imposed for misdemeanor convictions.

(b) Procedure Generally; Term of Imprisonment. – A sentence imposed for a misdemeanor must contain a sentence disposition specified for the class of offense and prior conviction level, and any sentence of imprisonment must be within the range specified for the class of offense and prior conviction level, unless applicable statutes require otherwise. The kinds of sentence dispositions are active punishment, intermediate punishment, and community punishment. Except for the work credits authorized by G.S. 162-60, an offender whose sentence of imprisonment is activated must serve each day of the term imposed.

(c) Suspension of Sentence. – Unless otherwise provided, the court must suspend a sentence of imprisonment if the class of offense and prior conviction level requires community or intermediate punishment as a sentence disposition.

"**§ 15A-1340.21. Prior conviction level for misdemeanor sentencing.**

(a) Generally. – The prior conviction level of a misdemeanor offender is determined by calculating the number of the offender's prior convictions that the court finds to have been proven in accordance with this section.

(b) Prior Conviction Levels for Misdemeanor Sentencing. – Levels are:

(1) Level I – 0 prior convictions.

(2) Level II – At least 1, but not more than 4 prior convictions.

(3) Level III – At least 5 prior convictions.

(c) Proof of Prior Convictions. – A prior conviction may be proved by:

(1) Stipulation of the parties;

(2) An original or copy of the court record of the prior conviction;

(3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts;

(4) Oral testimony of a party with personal knowledge of the relevant facts of the conviction; or

(5) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is **prima facie** evidence that the offender named therein is the same as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, 'copy' includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. Evidence adduced by either party at trail may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, either the State or the offender is entitled to a continuance of the sentencing hearing.

(d) Multiple Prior Convictions Obtained in One Court Week. – For purposes of this section, if an offender is convicted of more than one offense in a single session of district court, or in a single week of superior court or of a court in another jurisdiction, only one of the convictions may be used to determine the prior conviction level.

"**§ 15A-1340.22. Multiple convictions.**

(a) Limits on Consecutive Sentences. – If the court elects to impose consecutive sentences for two or more misdemeanors and the most serious misdemeanor is classified in Class 1 or Class 2, the cumulative length of the sentences of imprisonment may not exceed twice the maximum sentence authorized for the class and prior conviction level of the most serious offense. Consecutive sentences may not be imposed if all convictions are for Class 3 misdemeanors.

(b) Consolidation of Sentences. – If an offender is convicted of more than one offense at the same session of court, the court may consolidate the offenses for judgment and impose a single judgment for the consolidated offenses. Any sentence

imposed must be consistent with the appropriate prior conviction level of the most serious offense.

"**§ 15A-1340.23. Punishment limits for each class of offense and prior conviction level.**

(a) Offense Classification; Default Classifications. – The offense classification is as specified in the offense for which the sentence is being imposed. If the offense is a misdemeanor for which there is no classification, it is as classified in G.S. 14-3.

(b) Fines. – Any judgment that includes a sentence of imprisonment may also include a fine. Additionally, when the defendant is other than an individual, the judgment may consist of a fine only. If a community punishment is authorized, the judgment may consist of a fine only. Unless otherwise provided for a specific offense, the maximum fine that may be imposed is two hundred dollars ($200.00) for a Class 3 misdemeanor and one thousand dollars ($1,000) for a Class 2 misdemeanor. The amount of the fine for a Class 1 misdemeanor is in the discretion of the court.

(c) Punishment for Each Class of Offense and Prior Conviction Level; Punishment Chart Described. – Unless otherwise provided for a specific offense, the authorized punishment for each class of offense and prior conviction level is as specified in the chart below. Prior conviction levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offenses are indicated by the Arabic numbers placed vertically on the left side of the chart. Each grid on the chart contains the following components:

(1) A sentence disposition or dispositions: 'C' indicates that a community punishment is authorized; 'I' indicates that an intermediate punishment is authorized; and 'A' indicates that an active punishment is authorized; and

(2) A range of durations for the sentence of imprisonment: any sentence within the duration specified is permitted.

PRIOR CONVICTION LEVELS

MISDEMEANOR

OFFENSE CLASS	LEVEL I No Prior Convictions	LEVEL II One to Four Prior Convictions	LEVEL III Five or More Prior Convictions
1	1-45 days C	1-60 days C/I	1-120 days C/I/A
2	1-30 days C	1-45 days C/I	1-60 days C/I/A
3	1-10 days C	1-20 days C/I	1-30 days C/I/A."

Sec. 2. G.S. 14-1.1 is repealed.

Sec. 2.1. G.S. 14-2 is repealed.

Sec. 3. G.S. 14-2.1 is repealed.

Sec. 4. G.S. 14-2.2 is repealed.

Sec. 5. G.S. 14-2.4 reads as rewritten:

"**§ 14-2.4. Punishment for conspiracy to commit a felony.**

Unless a different ~~punishment~~ classification is expressly stated, a person who is convicted of a conspiracy to commit a felony is ~~guilty:~~ guilty of a felony that is one class lower than the felony he or she conspired to commit, except that a conspiracy to commit a Class I felony is a Class 1 misdemeanor.

~~(1) Of a Class J felony if the felony he conspired to commit was a Class H, I, or J felony;~~

~~(2) Of a Class H felony if the felony he conspired to commit was any other class of felony.~~

Unless a different classification is expressly stated, a person who is convicted of a conspiracy to commit a misdemeanor is guilty of a misdemeanor that is one class lower than the misdemeanor he or she conspired to commit, except that a conspiracy to commit a Class 3 misdemeanor is a Class 3 misdemeanor."

Sec. 6. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-2.5. Punishment for attempt to commit a felony or misdemeanor.**

Unless a different classification is expressly stated, an attempt to commit a misdemeanor or a felony is punishable under the same classification as the offense which the offender attempted to commit."

Sec. 7. G.S. 14-3 reads as rewritten:

"**§ 14-3. Punishment of misdemeanors, infamous offenses, offenses committed in secrecy and malice, or with deceit and intent to defraud, or with ethnic animosity.**

(a) Except as provided in subsections (b) and (c), every person who shall be convicted of any misdemeanor for which no specific classification and no specific punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor. ~~by fine, by imprisonment for a term not exceeding two years, or by both, in the discretion of the court.~~ Any misdemeanor that has a specific punishment, but is not assigned a classification by the General Assembly pursuant to law is classified as follows, based on the maximum punishment allowed by law for the offense as it existed on the effective date of Article 81B of Chapter 15A of the General Statutes.

(1) If that maximum punishment is more than six months imprisonment, it is a Class 1 misdemeanor;

(2) If that maximum punishment is more than 30 days but not more than six months imprisonment, it is a Class 2 misdemeanor; and

(3) If that maximum punishment is 30 days or less imprisonment or only a fine, it is a Class 3 misdemeanor.

Misdemeanors that have punishments for one or more counties or cities pursuant to a local act of the General Assembly that are different from the generally applicable punishment are classified pursuant to this subsection if not otherwise specifically classified.

(b) If a misdemeanor offense as to which no specific punishment is prescribed be infamous, done in secrecy and malice, or with deceit and intent to defraud, the offender

shall, except where the offense is a conspiracy to commit a misdemeanor, be guilty of a Class H felony.

(c) If any Class 2 or Class 3 misdemeanor ~~offense with punishment less than the punishment for a general misdemeanor~~ is committed because of the victim's race, color, religion, nationality, or country of origin, the offender shall be guilty of a ~~general~~ Class 1 misdemeanor. If any ~~general~~ Class 1 misdemeanor offense is committed because of the victim's race, color, religion, nationality, or country of origin, the offender shall be guilty of a Class ~~J~~ I felony."

Sec. 8. G.S. 14-4(a) reads as rewritten:

"(a) Except as provided in subsection (b), if any person shall violate an ordinance of a county, city, town, or metropolitan sewerage district created under Article 5 of Chapter 162A, he shall be guilty of a Class 3 misdemeanor~~ and shall be fined not more than five hundred dollars ($500.00), or imprisoned for not more than 30 days~~. No fine shall exceed fifty dollars ($50.00) unless the ordinance expressly states that the maximum fine is greater than fifty dollars ($50.00)."

Sec. 9. G.S. 14-7.6 reads as rewritten:

"**§ 14-7.6. Sentencing of habitual felons.**

When an habitual felon as defined in this Article shall commit any felony classified as a Class E, F, G, H, or I felony under the laws of the State of North Carolina, he must, upon conviction or plea of guilty under indictment as herein provided, be punished as a Class D felon. In determining the prior record level, convictions used to establish a person's status as a habitual felon may not be used. ~~(except where the death penalty or a sentence of life imprisonment is imposed) be sentenced as a Class C felon. Notwithstanding any other provision of law, a person sentenced under this Article shall serve a term of not less than seven years in prison, excluding gain time granted under G.S. 148-13. A person sentenced under this Article shall receive a sentence of at least 14 years in the State's prison and shall be entitled to credit for good behavior under G.S. 15A-1340.7. The sentencing judge may not suspend the sentence and may not place the person sentenced on probation.~~ Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder."

Sec. 10. G.S. 15A-1022(a) reads as rewritten:

"(a) Except in the case of corporations or in misdemeanor cases in which there is a waiver of appearance under G.S. 15A-1011(a)(3), a superior court judge may not accept a plea of guilty or no contest from the defendant without first addressing him personally and:

(1) Informing him that he has a right to remain silent and that any statement he makes may be used against him;
(2) Determining that he understands the nature of the charge;
(3) Informing him that he has a right to plead not guilty;
(4) Informing him that by his plea he waives his right to trial by jury and his right to be confronted by the witnesses against him;
(5) Determining that the defendant, if represented by counsel, is satisfied with his representation;

(6) Informing him of the maximum possible sentence on the charge for the class of offense for which he is being sentenced, including that possible from consecutive sentences, and of the mandatory minimum sentence, if any, on the charge; and

(7) Informing him that if he is not a citizen of the United States of America, a plea of guilty or no contest may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law."

Sec. 11. G.S. 15A-1301 reads as rewritten:

"**§ 15A-1301. Order of commitment to imprisonment when not otherwise specified.**

When a judicial official orders that a defendant be imprisoned he must issue an appropriate written commitment order. When the commitment is to a sentence of imprisonment, the commitment must include the identification and class of the offense or offenses for which the defendant was convicted and, if the sentences are consecutive, the maximum sentence allowed by law upon conviction of each offense for the punishment range used to impose the sentence for the class of offense and prior record or conviction level, and, if the sentences are concurrent or consolidated, the longest of the maximum sentences allowed by law for the classes of offense and prior record or conviction levels upon conviction of any of the offenses."

Sec. 12. G.S. 15A-1331 reads as rewritten:

"**§ 15A-1331. Authorized sentences; conviction.**

(a) The criminal judgment entered against a person in either district or superior court ~~may~~must be consistent with the provisions of Article 81B of this Chapter and contain a sentence disposition consistent with that Article, unless the offense for which his guilt has been established is not covered by that Article. ~~a capital offense, or unless a statute otherwise specifically provides, include a sentence in accordance with the provision of this Article to one or a combination of the following alternatives:~~

~~(1) Probation as authorized by Article 82, Probation, or a term of imprisonment as authorized by Article 83, Imprisonment; or~~

~~(2) A fine as authorized by Article 84, Fines; or~~

~~(3) Other punishment authorized or required by law.~~

(b) For the purpose of imposing sentence, a person has been convicted when he has been adjudged guilty or has entered a plea of guilty or no contest."

Sec. 13. G.S. 15A-1332(c) reads as rewritten:

"(c) Presentence Commitment for Study. – When the court desires more detailed information as a basis for determining the sentence to be imposed than can be provided by a presentence investigation, the court may commit a defendant to the Department of Correction for study for the shortest period necessary to complete the study, not to exceed 90 days, if that defendant has been charged with or convicted of ~~a~~ any felony or a Class 1 misdemeanor crime or crimes for which he may be imprisoned for more than six months and if he consents. The period of commitment must end when the study is completed, and may not exceed 90 days. The Department must conduct a complete study of a defendant committed to it under this subsection, inquiring into such matters as the defendant's previous delinquency or criminal experience, his social background,

his capabilities, his mental, emotional and physical health, and the availability of resources or programs appropriate to the defendant. Upon completion of the study or the end of the 90-day period, whichever occurs first, the Department of Correction must release the defendant to the sheriff of the county in which his case is docketed. The Department must forward the study to the clerk in that county, including whatever recommendations the Department believes will be helpful to a proper resolution of the case. When a defendant is returned from a presentence commitment for study, the conditions of pretrial release which obtained for the defendant before the commitment continue until judgment is entered, unless the conditions are modified under the provisions of G.S. 15A-534(e)."

Sec. 14. Article 81A of Chapter 15A of the General Statutes, Sentencing Persons Convicted of Felonies, is repealed.

Sec. 15. G.S. 15A-1341 reads as rewritten:

"**§ 15A-1341. Probation generally.**

(a) Use of Probation. ~~A~~ Unless specifically prohibited, a person who has been convicted of any ~~noncapital~~ criminal offense ~~not punishable by a minimum term of life imprisonment or a minimum term without benefit of probation~~ may be placed on probation as provided by this Article if the class of offense of which the person is convicted and the person's prior record or conviction level under Article 81B of this Chapter authorizes a community or intermediate punishment as a type of sentence disposition or if the person is convicted of impaired driving under G.S. 20-138.1. ~~A person who has been charged with a criminal offense not punishable by a term of imprisonment greater than 10 years may be placed on probation as provided in this Article on motion of the defendant and the prosecutor if the court finds each of the following facts:~~

~~(1) Prosecution has been deferred by the prosecutor pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.~~

~~(2) Each known victim of the crime has been notified of the motion for probation by subpoena or certified mail and has been given an opportunity to be heard.~~

~~(3) The defendant has not been convicted of any felony or of any misdemeanor involving moral turpitude.~~

~~(4) The defendant has not previously been placed on probation and so states under oath.~~

~~(5) The defendant is unlikely to commit another offense punishable by a term of imprisonment greater than 30 days.~~

(a1) Deferred Prosecution. – A person who has been charged with a Class H or I felony or a misdemeanor may be placed on probation as provided in this Article on motion of the defendant and the prosecutor if the court finds each of the following facts:

(1) Prosecution has been deferred by the prosecutor pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

(2) Each known victim of the crime has been notified of the motion for probation by subpoena or certified mail and has been given an opportunity to be heard.
(3) The defendant has not been convicted of any felony or of any misdemeanor involving moral turpitude.
(4) The defendant has not previously been placed on probation and so states under oath.
(5) The defendant is unlikely to commit another offense other than a Class 3 misdemeanor.

(b) Supervised and Unsupervised Probation. – The court may place a person on supervised or unsupervised probation. A person on unsupervised probation is subject to all incidents of probation except supervision by or assignment to a probation officer.

(c) Election to Serve Sentence or Be Tried on Charges. – Any person placed on probation may at any time during the probationary period elect to serve his suspended sentence of imprisonment in lieu of the remainder of his probation. Any person placed on probation upon deferral of prosecution may at any time during the probationary period elect to be tried upon the charges deferred in lieu of remaining on probation."

Sec. 16. G.S. 15A-1343(b1) reads as rewritten:

"(b1) Special Conditions. – In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

(1) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
(2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills or employment training, instruction, recreation, or residence for persons on probation.
(2a) Submit to a period of imprisonment in a facility for youthful offenders for a minimum of 90 days or a maximum of 120 days under special probation, reference G.S. 15A-1351(a) or G.S. 15A-1344(e), and abide by all rules and regulations as provided in conjunction with the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT), which provides an atmosphere for learning personal confidence, personal responsibility, self-respect, and respect for attitudes and value systems.
(3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).
(3a) Remain in one or more specified places for a specified period or periods each day, and wear a device which permits his compliance with the condition to be monitored electronically.
(3b) Submit to supervision by officers assigned to the Intensive Probation Program established pursuant to G.S. 143B-262(c), and abide by the rules and regulations adopted for that Program.

(4) Surrender his driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.

(5) Compensate the Department of Environment, Health, and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment, Health, and Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(6) Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

(7) Submit at reasonable times to warrantless searches by a probation officer of his person and of his vehicle and premises while he is present, for purposes specified by the court and reasonably related to his probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

(8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

(8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and which constitute the basis of the offense or offenses of which he was convicted.

(9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.

(10) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation."

Sec. 17. G.S. 15A-1343.1 reads as rewritten:

"**§ 15A-1343.1. Criteria for selection and sentencing to IMPACT.**

The criteria for selecting and sentencing youthful offenders to the Intensive Motivational Program of Alternative Correctional Treatment as provided under G.S. 15A-1343(b1)(2a) shall be as follows:

(1) The offender must be between the ages of 16 and 25;

(2) The offender must be convicted of ~~an offense punishable by a prison sentence of one year or more;~~ a Class 1 misdemeanor or a felony.

(3) The offender must submit to a medical evaluation by a physician approved by his probation or parole officer and must be certified by the physician to be medically fit for program participation;

(4) The offender must not previously have served an active sentence in excess of 120 days for an offense not subject to Article 81B of this Chapter or of 30 days for an offense subject to Article 81B of this Chapter."

Sec. 18. G.S. 15A-1344 reads as rewritten:

"**§ 15A-1344. Response to violations; alteration and revocation.**

(a) Authority to Alter or Revoke. – Except as provided in subsection (b), probation may be reduced, terminated, continued, extended, modified, or revoked by any judge entitled to sit in the court which imposed probation and who is resident or presiding in the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where the sentence of probation was imposed, where the probationer violates probation, or where the probationer resides. The district attorney of the prosecutorial district as defined in G.S. 7A-60 in which probation was imposed must be given reasonable notice of any hearing to affect probation substantially.

(b) Limits on Jurisdiction to Alter or Revoke Unsupervised Probation. – If the sentencing judge has entered an order to limit jurisdiction to consider a sentence of unsupervised probation under G.S. 15A-1342(h), a sentence of unsupervised probation may be reduced, terminated, continued, extended, modified, or revoked only by the sentencing judge or, if the sentencing judge is no longer on the bench, by a presiding judge in the court where the defendant was sentenced.

(c) Procedure on Altering or Revoking Probation; Returning Probationer to District Where Sentenced. – When a judge reduces, terminates, extends, modifies, or revokes probation outside the county where the judgment was entered, the clerk must send a copy of the order and any other records to the court where probation was originally imposed. A court on its own motion may return the probationer to the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where probation was imposed or where the probationer resides for reduction, termination, continuation, extension, modification, or revocation of probation. In cases where the probation is revoked in a county other than the county of original conviction the clerk in that county must issue a commitment order

and must file the order revoking probation and the commitment order, which will constitute sufficient permanent record of the proceeding in that court, and must send a certified copy of the order revoking probation, the commitment order, and all other records pertaining thereto to the county of original conviction to be filed with the original records. The clerk in the county other than the county of original conviction must issue the formal commitment to the North Carolina Department of Correction.

(d) Extension and Modification; Response to Violations. – At any time prior to the expiration or termination of the probation period, the court may after notice and hearing and for good cause shown extend the period of probation up to the maximum allowed under G.S. 15A-1342(a) and may modify the conditions of probation. The probation period shall be tolled if the probationer shall have pending against him criminal charges in any court of competent jurisdiction, which, upon conviction, could result in revocation proceedings against him for violation of the terms of this probation. The hearing may be held in the absence of the defendant, if he fails to appear for the hearing after a reasonable effort to notify him. If a convicted defendant violates a condition of probation at any time prior to the expiration or termination of the period of probation, the court, in accordance with the provisions of G.S. 15A-1345, may continue him on probation, with or without modifying the conditions, may place the defendant on special probation as provided in subsection (e), or, if continuation, modification, or special probation is not appropriate, may revoke the probation and activate the suspended sentence imposed at the time of initial sentencing, if any, or may order that charges as to which prosecution has been deferred be brought to trial; provided that probation may not be revoked solely for conviction of a ~~misdemeanor unless it is punishable by imprisonment for more than 30 days.~~ Class 3 misdemeanor. The court, before activating a sentence to imprisonment established when the defendant was placed on probation, may reduce the ~~sentence.~~ sentence, but the reduction must be consistent with subsection (d1). A sentence activated upon revocation of probation commences on the day probation is revoked and runs concurrently with any other period of probation, parole, or imprisonment to which the defendant is subject during that period unless the revoking judge specifies that it is to run consecutively with the other period.

(d1) Reduction of Initial Sentence. – If the court elects to reduce the sentence of imprisonment for a felony, it may not deviate from the range of minimum durations established in Article 81B of this Chapter for the class of offense and prior record level used in determining the initial sentence. If the presumptive range is used for the initial suspended sentence, the reduced sentence must be within the presumptive range. If the mitigated range is used for the initial suspended sentence, the reduced sentence must be within the mitigated range. If the aggravated range is used for the initial suspended sentence, the reduced sentence must be within the aggravated range. If the court elects to reduce the sentence for a misdemeanor, it may not deviate from the range of durations established in Article 81B for the class of offense and prior conviction level used in determining the initial sentence.

(e) Special Probation in Response to Violation. – When a defendant has violated a condition of probation, the court may modify his probation to place him on special probation as provided in this subsection. In placing him on special probation, the court

may continue or modify the conditions of his probation and in addition require that he submit to a period or periods of imprisonment, either continuous or noncontinuous, at whatever time or intervals within the period of probation the court determines. In addition to any other conditions of probation which the court may impose, the court shall impose, when imposing a period or periods of imprisonment as a condition of special probation, the condition that the defendant obey the Rules and Regulations of the Department of Correction governing conduct of inmates, and this condition shall apply to the defendant whether or not the court imposes it as a part of the written order. If imprisonment is for continuous periods, the confinement may be in either the custody of the Department of Correction or a local confinement facility. Noncontinuous periods of imprisonment under special probation may only be served in a designated local confinement or treatment facility. Except for probationary sentences for impaired driving under G.S. 20-138.1, the ~~The~~ total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, may not exceed six months or one fourth the maximum ~~penalty allowed by law~~ sentence of imprisonment imposed for the offense, whichever is less. For probationary sentences for impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, may not exceed one-fourth the maximum penalty allowed by law. No confinement other than an activated suspended sentence may be required beyond the period of probation or beyond two years of the time the special probation is imposed, whichever comes first.

(f) Revocation after Period of Probation. – The court may revoke probation after the expiration of the period of probation if:

(1) Before the expiration of the period of probation the State has filed a written motion with the clerk indicating its intent to conduct a revocation hearing; and

(2) The court finds that the State has made reasonable effort to notify the probationer and to conduct the hearing earlier."

Sec. 19. G.S. 15A-1351 reads as rewritten:

"**§ 15A-1351. Sentence of imprisonment; incidents; special probation.**

(a) The judge may sentence to special probation a defendant convicted of ~~an offense for which the maximum penalty does not exceed 10 years to special probation~~a criminal offense other than impaired driving under G.S. 20-138.1, if based on the defendant's prior record or conviction level as found pursuant to Article 81B of this Chapter, an intermediate punishment is authorized for the class of offense of which the defendant has been convicted. A defendant convicted of impaired driving under G.S. 20-138.1 may also be sentenced to special probation. Under a sentence of special probation, the court may suspend the term of imprisonment and place the defendant on probation as provided in Article 82, Probation, and in addition require that the defendant submit to a period or periods of imprisonment in the custody of the Department of Correction or a designated local confinement or treatment facility at whatever time or intervals within the period of probation, consecutive or nonconsecutive, the court determines. In addition to any other conditions of probation which the court may impose, the court shall impose, when imposing a period or periods of imprisonment as a

condition of special probation, the condition that the defendant obey the Rules and Regulations of the Department of Correction governing conduct of inmates, and this condition shall apply to the defendant whether or not the court imposes it as a part of the written order. If imprisonment is for continuous periods, the confinement may be in the custody of either the Department of Correction or a local confinement facility. Noncontinuous periods of imprisonment under special probation may only be served in a designated local confinement or treatment facility. Except for probationary sentences of impaired driving under G.S. 20-138.1, the ~~The~~ total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, may not exceed six months or one fourth the maximum ~~penalty allowed by law~~ sentence of imprisonment imposed for the offense, whichever is less, and no confinement other than an activated suspended sentence may be required beyond two years of conviction. For probationary sentences for impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, may not exceed one-fourth the maximum penalty allowed by law. In imposing a sentence of special probation, the judge may credit any time spent committed or confined, as a result of the charge, to either the suspended sentence or to the imprisonment required for special probation. The period of probation, including the period of imprisonment required for special probation, may not exceed five years. The court may revoke, modify, or terminate special probation as otherwise provided for probationary sentences.

(b) ~~Sentencing of a person convicted of a felony that occurred on or after the effective date of Article 81A of this Chapter is subject to that Article; a minimum term of imprisonment shall not be imposed on such a person.~~ Sentencing of a person convicted of a felony or of a misdemeanor other than impaired driving under G.S. 20-138.1 that occurred on or after the effective date of Article 81B is subject to that article. ~~With regard to convicted persons not subject to Article 81A,~~ For persons convicted of impaired driving under G.S. 20-138.1, a sentence to imprisonment must impose a maximum term and may impose a minimum term. The impaired driving judgment may state the minimum term or may state that a term constitutes both the minimum and maximum terms. If the impaired driving judgment states no minimum term, the defendant becomes eligible for parole in accordance with G.S. 15A-1371(a).

(c) Repealed by Session Laws 1979, c. 749, s. 7.

~~(d) Alternative to Minimum Term. – In lieu of imposing a minimum term, the court may recommend to the Parole Commission a minimum period of imprisonment the offender should serve before being granted parole. The recommendation has the effect provided in G.S. 15A-1371(c). This subsection shall not apply to a person convicted of a felony that occurred on or after the effective date of Article 81A of this Chapter.~~

~~(e) Youthful Offenders. – If an offender is under the age of 21 years at the time of conviction, the court may sentence the offender as a youthful offender under the provisions of Article 3B of Chapter 148 of the General Statutes.~~

(f) Work Release. – When sentencing a person convicted of a felony, the sentencing court may recommend that the sentenced offender be granted work release as authorized

in G.S. 148-33.1. When sentencing a person convicted of a misdemeanor, the sentencing court may recommend or, with the consent of the person sentenced, order that the sentenced offender be granted work release as authorized in G.S. 148-33.1.

(g) Credit. – Credit towards a sentence to imprisonment is as provided in Article 19A of Chapter 15 of the General Statutes.

(h) Substance abuse recommendation. – The sentencing court may recommend that the sentenced offender be assigned to the Substance Abuse Treatment Unit for treatment of alcoholism or substance abuse during his imprisonment."

Sec. 20. G.S. 15A-1355(c) reads as rewritten:

"(c) Earned time; Credit for Good Behavior for Impaired Drivers. ~~The Department of Correction and jailers, as defined by G.S. 15A-1340.2, must give credit for good behavior toward service of a prison or jail term imposed for a felony that occurred on or after the effective date of Article 81A, as required by G.S. 15A-1340.7. The provisions of this subsection do not apply to persons convicted of Class A or Class B felonies nor to persons sentenced to a term of special probation under G.S. 15A-1344(e) or G.S. 15A-1351(a). The Department of Correction and jailers may give time credit toward service of other prison or jail terms imposed for a felony or misdemeanor, according to regulations issued by the Secretary of Correction as provided by G.S. 148-13.~~ Persons convicted of felonies occurring on or after the effective date of Article 81B of this Chapter may, consistent with regulations of the Department of Correction, earn credit which may be used to reduce their maximum terms of imprisonment as provided in G.S. 15A-1340.13(d). For sentences of imprisonment imposed for convictions of impaired driving, the ~~The~~ Department of Correction may give credit toward service of the maximum term and any minimum term of imprisonment and toward eligibility for parole for allowances of time as provided in rules and regulations made under G.S. 148-11 and 148-13."

Sec. 21. G.S. 15A-1370.1 reads as rewritten:

"**§ 15A-1370.1. Applicability of Article 85.**

This Article is applicable to all prisoners serving sentences of imprisonment for convictions of impaired driving. ~~sentenced prisoners, including Class A and Class B felons, and Class C felons who receive a sentence of life imprisonment, who are not subject to Article 85A of this Chapter~~."

Sec. 22. G.S. 15A-1371 reads as rewritten:

"**§ 15A-1371. Parole eligibility, consideration, and refusal.**

(a) Eligibility. – Unless his sentence includes a minimum sentence, a prisoner serving a term other than one included in a sentence of special probation imposed under authority of this Subchapter is eligible for release on parole at any time. A prisoner whose sentence includes a minimum term of imprisonment imposed under authority of this Subchapter is eligible for release on parole only upon completion of the service of that minimum term or one fifth of the maximum penalty allowed by law for the offense for which the prisoner is sentenced, whichever is less, less any credit allowed under G.S. 15A-1355(c) and Article 19A of Chapter 15 of the General Statutes. ~~Under this section, when the maximum allowed by law for the offense is life imprisonment, one fifth of the maximum is calculated as 20 years.~~

~~(a1) A prisoner serving a term of life imprisonment with no minimum term is eligible for parole after serving 20 years. This subsection applies to offenses committed on and after July 1, 1981.~~

~~(b) Consideration for Parole. — The Parole Commission must consider the desirability of parole for each person sentenced as a felon for a maximum term of 18 months or longer:~~

~~(1) Within the period of 90 days prior to his eligibility for parole, if he is ineligible for parole until he has served more than a year;~~

~~(2) Within the period of 90 days prior to the expiration of the first year of the sentence, if he is eligible for parole at any time. Whenever the Parole Commission will be considering for parole a prisoner who, if released, would have served less than half of the maximum term of his sentence, the Commission must notify the prisoner and the district attorney of the district where the prisoner was convicted at least 30 days in advance of considering the parole. If the district attorney makes a written request in such cases, the Commission must publicly conduct its consideration of parole. Following its consideration, the Commission must give the prisoner written notice of its decision. If parole is denied, the Commission must consider its decision while the prisoner is eligible for parole at least once a year until parole is granted and must give the prisoner written notice of its decision at least once a year; or~~

~~(3) Whenever the Parole Commission will be considering for parole a prisoner convicted of first- or second-degree murder, first-degree rape, or first-degree sexual offense, the Commission must notify, at least 30 days in advance of considering the parole, by first class mail at the last known address:~~

~~a. The prisoner;~~

~~b. The district attorney of the district where the prisoner was convicted;~~

~~c. The head of the law enforcement agency that arrested the prisoner, if the head of the agency has requested in writing that he be notified;~~

~~d. Any of the victim's immediate family members who have requested in writing to be notified; and~~

~~e. The victim, in cases of first-degree rape or first-degree sexual offense, if the victim has requested in writing to be notified.~~

~~The Parole Commission must consider any information provided by any such parties before consideration of parole. The Commission must also give the district attorney, the head of the law enforcement agency who has requested in writing to be notified, the victim, or any member of the victim's immediate family who has requested to be notified, written notice of its decision within 10 days of that decision.~~

~~(c) Statement of Reasons for Release before Minimum. – If parole is granted before the expiration of a minimum period of imprisonment imposed by the court under G.S. 15A-1351(b) or recommended by the court under G.S. 15A-1351(d), the Commission must state in writing the reasons why the imposed or recommended minimum was not followed.~~

(d) Criteria. – The Parole Commission may refuse to release on parole a prisoner it is considering for parole if it believes:

(1) There is a substantial risk that he will not conform to reasonable conditions of parole; or

(2) His release at that time would unduly depreciate the seriousness of his crime or promote disrespect for law; or

(3) His continued correctional treatment, medical care, or vocational or other training in the institution will substantially enhance his capacity to lead a law-abiding life if he is released at a later date; or

(4) There is a substantial risk that he would engage in further criminal conduct.

(e) Refusal of Parole. – A prisoner who has been granted parole may elect to refuse parole and to serve the remainder of his term of imprisonment.

~~(f) Mandatory Parole at End of Felony Term. – No later than six months prior to completion of his maximum term, the Parole Commission must parole every person convicted of a felony and sentenced to a maximum term of not less than 18 months of imprisonment, unless:~~

~~(1) The person is to serve a period of probation following his imprisonment;~~

~~(2) The person has been reimprisoned following parole as provided in G.S. 15A-1373(e); or~~

~~(3) The Parole Commission finds facts demonstrating a strong likelihood that the health or safety of the person or public would be endangered by his release at that time.~~

(g) Notwithstanding the provisions of subsection (a), a prisoner serving a sentence of not less than 30 days nor as great as 18 months for ~~a felony or a misdemeanor~~ impaired driving may be released on parole when he completes service of one-third of his maximum sentence unless the Parole Commission finds in writing that:

(1) There is a substantial risk that he will not conform to reasonable conditions of parole; or

(2) His release at that time would unduly depreciate the seriousness of his crime or promote disrespect for law; or

(3) His continued correctional treatment, medical care, or vocational or other training in the institution will substantially enhance his capacity to lead a law-abiding life if he is released at a later date; or

(4) There is a substantial risk that he would engage in further criminal conduct.

If a prisoner is released on parole by operation of this subsection, the term of parole is the unserved portion of the sentence to imprisonment, and the conditions of parole,

unless otherwise specified by the Parole Commission, are those authorized in G.S. 15A-1374(b)(4) through (10).

In order that the Parole Commission may have an adequate opportunity to make a determination whether parole under this section should be denied, no prisoner eligible for parole under this ~~section~~ subsection shall be released from confinement prior to the fifth full working day after he shall have been placed in the custody of the Secretary of Correction or the custodian of a local confinement facility.

(h) Community Service Parole. – Notwithstanding the provisions of any other subsection herein, certain prisoners specified herein shall be eligible for community service parole, in the discretion of the Parole Commission.

Community service parole is early parole for the purpose of participation in a program of community service under the supervision of a probation/parole officer. A parolee who is paroled under this subsection must perform as a condition of parole community service in an amount and over a period of time to be determined by the Parole Commission. However, the total amount of community service shall not exceed an amount equal to 32 hours for each month of active service remaining in his minimum sentence ~~(if he was sentenced prior to July 1, 1981), or 32 hours for each month of active service in one-half of his sentence imposed under G.S. 15A-1340.4.~~ The Parole Commission may grant early parole under this section without requiring the performance of community service if it determines that such performance is inappropriate to a particular case.

The probation/parole officer and the community service coordinator shall develop a program of community service for the parolee. The community service coordinator shall report any willful failure to perform community service work to the probation/parole officer. Parole may be revoked for any parolee who willfully fails to perform community service work as directed by a community service coordinator. The provisions of G.S. 15A-1376 shall apply to this violation of a condition of parole.

Community service parole eligibility shall be available to a prisoner:

(1) Who is serving an active sentence the term of which exceeds six months; and

(2) Who, in the opinion of the Parole Commission, is unlikely to engage in further criminal conduct; and

(3) Who agrees to complete service of his sentence as herein specified; and

(4) Who has served one-half of his minimum sentence ~~(if he was sentenced prior to July 1, 1981), or one-fourth of a sentence imposed under G.S. 15A-1340.4.~~

~~No prisoner convicted under Article 7A of Chapter 14 of a sex offense, under G.S. 14-39, 14-41, or 14-43.3, or under G.S. 90-95(h) of a drug trafficking offense shall be eligible for community service parole.~~

In computing the service requirements of subdivision (4) of this subsection, credit shall be given for good time and gain time credit earned pursuant to G.S. 148-13. Nothing herein is intended to create or shall be construed to create a right or entitlement to community service parole in any prisoner.

(i) A fee of one hundred dollars ($100.00) shall be paid by all persons who participate in the Community Service Parole Program. That fee must be paid to the clerk of court in the county in which the parolee is released. The fee must be paid in full within two weeks unless the Parole Commission, upon a showing of hardship by the person, allows him additional time to pay the fee. The parolee may not be required to pay the fee before he begins the community service unless the Parole Commission specifically orders that he do so. Fees collected under this subsection shall be deposited in the General Fund. The fee imposed under this section may be paid as prescribed by the supervising parole officer.

(j) The Parole Commission may terminate a prisoner's community service parole before the expiration of the term of imprisonment where doing so will not endanger the public, unduly depreciate the seriousness of the crime, or promote disrespect for the law."

Sec. 23. G.S. 15A-1372 reads as rewritten:

"**§ 15A-1372. Length and effect of parole term.**

(a) Minimum Term of Parole. – The term of parole for any person released from imprisonment may be no less than:

(1) One year, if the remainder of the maximum term of imprisonment is one year or more; or

(2) The remainder of the maximum term, if the remainder of the term of imprisonment is less than one year.

(b) Maximum Term of Parole. – The maximum term of parole is the ~~lesser of the following:~~

~~(1)~~ ~~The~~ remainder of the maximum ~~term; or~~ term.

~~(2) Five years when the maximum prison sentence imposed is greater than 20 years; or~~

~~(3) Three years when the maximum prison sentence imposed is greater than 10 years but no greater than 20 years; or~~

~~(4) Two years when the maximum prison sentence imposed is not greater than 10 years.~~

(c) Termination of Sentence. – When a parolee completes his period of parole, the sentence or sentences from which he was paroled are terminated.

~~(d) Parole and Terminate. – The Parole Commission is authorized simultaneously to parole and terminate supervision of a prisoner when such prisoner has less than 180 days remaining on his maximum sentence, and when the Commission finds that such action will not be incompatible with the public interest. When the Parole Commission finds that such action will not be incompatible with the public interest, the Commission is also authorized:~~

~~(1) Simultaneously to parole and terminate supervision of a prisoner;~~

~~(2) To parole a prisoner on the condition that he be placed under house arrest; or~~

~~(3) To parole a prisoner but continue to supervise the prisoner for a period to be determined by the Commission;~~

~~when the prisoner is imprisoned only for a misdemeanor, except those persons convicted under G.S. 20-138.1 of driving while impaired or any offense involving impaired driving~~."

Sec. 24. Article 85A of Chapter 15A of the General Statutes, Parole of Certain Convicted Felons, is repealed.

Sec. 25. G.S. 15A-1415(b) reads as rewritten:

"(b) The following are the only grounds which the defendant may assert by a motion for appropriate relief made more than 10 days after entry of judgment:

(1) The acts charged in the criminal pleading did not at the time they were committed constitute a violation of criminal law.

(2) The trial court lacked jurisdiction over the person of the defendant or over the subject matter.

(3) The conviction was obtained in violation of the Constitution of the United States or the Constitution of North Carolina.

(4) The defendant was convicted or sentenced under a statute that was in violation of the Constitution of the United States or the Constitution of North Carolina.

(5) The conduct for which the defendant was prosecuted was protected by the Constitution of the United States or the Constitution of North Carolina.

(6) Evidence is available which was unknown or unavailable to the defendant at the time of the trial, which could not with due diligence have been discovered or made available at that time, and which has a direct and material bearing upon the guilt or innocence of the defendant.

(7) There has been a significant change in law, either substantive or procedural, applied in the proceedings leading to the defendant's conviction or sentence, and retroactive application of the changed legal standard is required.

(8) The sentence imposed was unauthorized at the time imposed, <u>contained a type of sentence disposition or a term of imprisonment not authorized for the particular class of offense and prior record or conviction level</u> ~~exceeded the maximum authorized by law,~~ was illegally imposed, or is otherwise invalid as a matter of law. However, a motion for appropriate relief on the grounds that the sentence imposed on the defendant is not supported by evidence introduced at the trial and sentencing hearing must be made before the sentencing judge.

(9) The defendant is in confinement and is entitled to release because his sentence has been fully served."

Sec. 26. G.S. 15A-1442 is amended by adding a new subdivision to read:

"(<u>5b</u>) <u>Violation of Sentencing Structure – The sentence imposed:</u>

a. Results from an incorrect finding of the defendant's prior record level under G.S. 15A-1340.14 or the defendant's prior conviction level under G.S. 15A-1340.21;
b. Contains a type of sentence disposition that is not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level; or
c. Contains a term of imprisonment that is for a duration not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class or offense and prior record or conviction level."

Sec. 27. G.S. 15A-1444 reads as rewritten:

"**§ 15A-1444. When defendant may appeal; certiorari.**

(a) A defendant who has entered a plea of not guilty to a criminal charge, and who has been found guilty of a crime, is entitled to appeal as a matter of right when final judgment has been entered.

(a1) A defendant who has been found guilty, or entered a plea of guilty or no contest to a felony, is entitled to appeal as a matter of right the issue of whether his or her sentence is supported by evidence introduced at the trial and sentencing hearing only if the minimum ~~prison term of the~~ sentence of imprisonment does not fall within the presumptive range for the defendant's prior record or conviction level and class of offense.~~exceeds the presumptive term set by G.S. 15A-1340.4, and if the judge was required to make findings as to aggravating or mitigating factors pursuant to this Article.~~ Otherwise, the defendant ~~he~~ is not entitled to appeal this issue as a matter of right but may petition the appellate division for review of this issue by writ of certiorari.

(a2) A defendant who has entered a plea of guilty or no contest to a felony or misdemeanor in superior court is entitled to appeal as a matter of right the issue of whether the sentence imposed:

(1) Results from an incorrect finding of the defendant's prior record level under G.S. 15A-1340.14 or the defendant's prior conviction level under G.S. 15A-1340.21;
(2) Contains a type of sentence disposition that is not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level; or
(3) Contains a term of imprisonment that is for a duration not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level.

(b) Procedures for appeal from the magistrate to the district court are as provided in Article 90, Appeals from Magistrates and from District Court Judges.

(c) Procedures for appeal from the district court to the superior court are as provided in Article 90, Appeals from Magistrates and from District Court Judges.

(d) Procedures for appeal to the appellate division are as provided in this Article, the rules of the appellate division, and Chapter 7A of the General Statutes. The appeal must be perfected and conducted in accordance with the requirements of those provisions.

(e) Except as provided in subsection (a1) of this section and G.S. 15A-979, and except when a motion to withdraw a plea of guilty or no contest has been denied, the defendant is not entitled to appellate review as a matter of right when he has entered a plea of guilty or no contest to a criminal charge in the superior court, but he may petition the appellate division for review by writ of certiorari. If an indigent defendant petitions the appellate division for a writ of certiorari, the presiding superior court judge may in his discretion order the preparation of the record and transcript of the proceedings at the expense of the State.

(f) The ruling of the court upon a motion for appropriate relief is subject to review upon appeal or by writ of certiorari as provided in G.S. 15A-1422.

(g) Review by writ of certiorari is available when provided for by this Chapter, by other rules of law, or by rule of the appellate division."

Sec. 28. G.S. 15A-1445(a) is amended by adding a new subdivision to read as follows:

"(3) When the State alleges that the sentence imposed:

a. Results from an incorrect determination of the defendant's prior record level under G.S. 15A-1340.14 or the defendant's prior conviction level under G.S. 15A-1340.21;

b. Contains a type of sentence disposition that is not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level; or

c. Contains a term of imprisonment that is for a duration not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level."

Sec. 29. G.S. 15A-2002 reads as rewritten:

"**§ 15A-2002. Capital offenses; jury verdict and sentence.**

If the recommendation of the jury is that the defendant be sentenced to death, the judge shall impose a sentence of death in accordance with the provisions of Chapter 15, Article 19 of the General Statutes. If the recommendation of the jury is that the defendant be imprisoned for life in the State's prison, the judge shall impose a sentence of imprisonment for life without parole in the State's prison."

Sec. 30. G.S. 90-95 reads as rewritten:

"**§ 90-95. Violations; penalties.**

(a) Except as authorized by this Article, it is unlawful for any person:

(1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;

(2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;

(3) To possess a controlled substance.

(b) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(1) with respect to:

(1) A controlled substance classified in Schedule I or II shall be punished as a Class H felon;

(2) A controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class I felon, but the transfer of less than 5 grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.

(d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

(1) A controlled substance classified in Schedule I shall be punished as a Class I felon;

(2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a ~~misdemeanor, and shall be sentenced to a term of imprisonment of not more than two years or fined not more than two thousand dollars ($2,000), or both in the discretion of the court.~~ Class 1 misdemeanor. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, the violation shall be punishable as a Class I felony. If the controlled substance is phencyclidine, or cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine or ecgonine), the violation shall be punishable as a Class I felony.

(3) A controlled substance classified in Schedule V shall be guilty of a ~~misdemeanor and shall be sentenced to a term of imprisonment of not more than six months or fined not more than five hundred dollars ($500.00), or both in the discretion of the court;~~ Class 2 misdemeanor;

(4) A controlled substance classified in Schedule VI shall be guilty of a Class 3 misdemeanor, ~~and shall be sentenced to a term of imprisonment of not more than 30 days or fined not more than one hundred dollars ($100.00), or both, in the discretion of the court,~~ but any sentence of imprisonment imposed must be suspended and the judge may not require at the time of sentencing that the defendant serve a period of imprisonment as a special condition of probation. If the quantity of the controlled substance exceeds one-half of an ounce (avoirdupois) of marijuana or one-twentieth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a ~~general~~ Class 1 misdemeanor. If the quantity of the controlled substance exceeds one and one-half ounces

(avoirdupois) of marijuana or three-twentieths of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

(d1) Except as authorized by this Article, it is unlawful for any person to:

(1) Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

(2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Any person who violates this subsection shall be punished as a Class H felon.

(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

(1) Anthranilic acid.
(2) Benzyl cyanide.
(3) Chloroephedrine.
(4) Chloropseudoephedrine.
(5) D-lysergic acid.
(6) Ephedrine.
(7) Ergonovine maleate.
(8) Ergotamine tartrate.
(9) Ethyl Malonate.
(10) Ethylamine.
(11) Isosafrole.
(12) Malonic acid.
(13) Methylamine.
(14) N-acetylanthranilic acid.
(15) N-ethylephedrine.
(16) N-ethylepseudoephedrine.
(17) N-methylephedrine.
(18) N-methylpseudoephedrine.
(19) Norpseudoephedrine.
(20) Phenyl-2-propane.
(21) Phenylacetic acid.
(22) Phenylpropanolamine.
(23) Piperidine.
(24) Piperonal.
(25) Propionic anhydride.
(26) Pseudoephedrine.
(27) Pyrrolidine.

(28) Safrole.

(29) Thionylchloride.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1),(2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits ~~an offense~~ a Class 1 misdemeanor under this Article ~~for which the prescribed punishment includes imprisonment for not more than two years,~~ and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I ~~felon;~~ felon. The prior conviction used to raise the current offense to a Class I felony cannot be used to calculate the prior record level;

(4) If any person commits ~~an offense under this Article for which the prescribed punishment includes imprisonment for not more than six months~~a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a ~~misdemeanor and shall be sentenced to a term of imprisonment of not more than two years or fined not more than two thousand dollars ($2,000), or both in the discretion of the court;~~ Class 1 misdemeanor. The prior conviction used to raise the current offense to a Class 1 misdemeanor cannot be used to calculate the prior conviction level;

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age or a pregnant female shall be punished as a Class E felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant;

(6) For the purpose of increasing ~~punishment,~~ punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial;

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a ~~misdemeanor and shall be sentenced to a term of imprisonment of not more than six months or fined not more than five hundred dollars ($500.00), or both in the discretion of the court;~~ Class 2 misdemeanor;

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for an elementary or secondary school or within 300 feet of the boundary of real property used for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1). ~~A person sentenced under this subdivision must serve a mandatory term of imprisonment of no less than two years, notwithstanding the provisions of G.S. 90-95(h)(5) or any other law. The sentencing judge may not suspend the mandatory two-year term of imprisonment or place the person on probation for the mandatory two-year term of imprisonment. During that time the prisoner is not eligible for early parole or early release.~~

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class I felony. ~~A person sentenced under this subdivision shall serve a mandatory minimum term of imprisonment of no less than two years for a violation of this subdivision which shall run consecutively with and shall commence at the expiration of any sentence already being served by that person. The sentencing judge may not suspend the mandatory minimum two-year term of imprisonment.~~

(f) Any person convicted of an offense or offenses under this Article who is sentenced to an active term of imprisonment that is less than the maximum active term that could have been imposed may, in addition, be sentenced to a term of special probation. Except as indicated in this subsection, the administration of special probation shall be the same as probation. The conditions of special probation shall be fixed in the same manner as probation, and the conditions may include requirements for rehabilitation treatment. Special probation shall follow the active ~~sentence but shall not preclude parole. If parole is granted, special probation shall become effective in place of parole.~~ sentence. No term of special probation shall exceed five years. Special probation may be revoked in the same manner as probation; upon revocation, the original term of imprisonment may be increased by no more than the difference between the active term of imprisonment actually served and the maximum active term that could have been imposed at trial for the offense or offenses for which the person was convicted, and the resulting term of imprisonment need not be diminished by the time spent on special probation. ~~A person whose special probation term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment.~~

(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all

proceedings in the district court division of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed.

(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of 50 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as 'trafficking in marijuana' and if the quantity of such substance involved:

a. Is in excess of 50 pounds, but less than 100 pounds, such person shall be punished as a Class H felon and shall be sentenced to a minimum term of ~~at least five years~~ 25 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 100 pounds or more, but less than 2,000 pounds, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of ~~at least seven years~~ 35 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of ~~at least 14 years~~ 70 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

d. Is 10,000 pounds or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of ~~at least 35 years~~ 175 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as 'trafficking in methaqualone' and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of ~~at least seven years~~ 35 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of ~~at least 14 years~~ 70 months in the State's

prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of ~~at least 35 years~~ 175 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as 'trafficking in cocaine' and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of ~~at least seven years~~ 35 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of ~~at least 14 years~~ 70 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of ~~at least 35 years~~ 175 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(3a) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of amphetamine, its salts, optical isomers, and salts of its optical isomers or any mixture containing such substance, shall be guilty of a felony which felony shall be known as 'trafficking in amphetamine' and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of ~~at least seven years~~ 35 months in the State's

prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of ~~at least 14 years~~ 70 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of ~~at least 35 years~~ 175 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine shall be guilty of a felony which felony shall be known as 'trafficking in methamphetamine' and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of ~~at least seven years~~ 35 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of ~~at least 14 years~~ 70 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of ~~at least 35 years~~ 175 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as 'trafficking in opium or heroin' and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of ~~at least 14 years~~ 70 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of ~~at least 18 years~~ 90 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of ~~at least 45 years~~ 225 months in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as 'trafficking in Lysergic Acid Diethylamide'. If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of ~~at least seven years~~ 35 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of ~~at least 14 years~~ 35 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of ~~at least 35 years~~ 175 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. ~~A person sentenced under this subsection as a committed youthful offender shall be eligible for release or parole no earlier than that person would have been had he been sentenced under this subsection as a regular offender.~~ The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge, provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators,

or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy to commit any of the offenses described in subsection (h) of this section."

Sec. 31. G.S. 148-4.1 is amended by adding a new subsection to read:

"(h) No person sentenced under Article 81B of Chapter 15A shall be released pursuant to this section."

Sec. 32. G.S. 148-13 reads as rewritten:

"**§ 148-13. Regulations as to custody grades, privileges, gain time credit, etc.**

(a) The Secretary of Correction may issue regulations regarding the grades of custody in which State prisoners are kept, the privileges and restrictions applicable to each custody grade, and the amount of cash, clothing, etc., to be awarded to State prisoners after their discharge or parole. The amount of cash awarded to a prisoner upon discharge or parole after being incarcerated for two years or longer shall be at least forty-five dollars ($45.00).

(a1) The Secretary of Correction shall promulgate rules to specify the rates at, and circumstances under, which earned time authorized by G.S. 15A-1340.13(d) may be earned or forfeited by persons serving activated sentences of imprisonment for felony convictions.

(b) With respect to prisoners who are serving prison or jail terms for impaired driving offenses ~~not subject to Article 81A of Chapter 15A of the General Statutes and prisoners serving a life term for a Class C felony~~under G.S. 20-138.1, the Secretary of Correction may, in his discretion, issue regulations regarding deductions of time from the terms of such prisoners for good behavior, meritorious conduct, work or study, participation in rehabilitation programs, and the like.

~~(c) With respect to all prisoners serving prison or jail terms for felonies that occurred on or after the effective date of Article 81A of Chapter 15A of the General Statutes, the Secretary of Correction and local jail administrators must grant credit toward their terms for good behavior as required by G.S. 15A-1340.7. The provisions of this subsection shall not apply to persons convicted of Class A or Class B felonies or persons sentenced to a life term for a Class C felony.~~

~~(d) With respect to prisoners serving prison or jail terms for felonies that occurred on or after the effective date of Article 81A of Chapter 15A, the Secretary of Correction shall issue regulations authorizing gain time credit to be deducted from the terms of such prisoners, in addition to the good behavior credit authorized by G.S. 15A-1340.7. Gain time credit may be granted for meritorious conduct and shall be granted for performance of regular work and regular participation in study, training, work release, and other rehabilitative programs inside or outside the prison or jail. Gain time credit earned pursuant to regulations issued under this subsection shall not be subject to~~

~~forfeiture for misconduct. Gain time shall be administered to qualified prisoners as follows:~~

~~(1) Gain Time I. In addition to the good behavior credit authorized by G.S. 15A-1340.7, prisoners who perform work assignments requiring at least four hours of actual work per day, and prisoners who participate in study, training, or other rehabilitative programs requiring at least four hours of productive activity per day, shall receive gain time credit at the rate of two days per month.~~

~~(2) Gain Time II. In addition to the good behavior credit authorized by G.S. 15A-1340.7, prisoners who perform work assignments requiring at least six hours of actual work per day, prisoners who perform in part-time work release programs, and prisoners who participate in study, training, or other rehabilitative programs requiring at least six hours of productive activity per day, shall receive gain time credit at the rate of four days per month.~~

~~(3) Gain Time III. In addition to the good behavior credit authorized by G.S. 15A-1340.7, prisoners who perform work assignments requiring special skills or special responsibilities and requiring at least six hours of actual work per day, prisoners who perform in full-time work release programs, and prisoners who participate in full-time study, training, or other rehabilitative programs shall receive gain time credit at the rate of six days per month.~~

~~The Secretary of Correction may, in his discretion, grant gain time credit at a rate greater than the rates specified in this subsection for meritorious conduct or emergency work performed, provided, however, that gain time granted for emergency work performed shall not exceed 30 days per month, nor shall gain time granted for meritorious conduct exceed 30 days for each act of meritorious conduct.~~

(e) The Secretary's regulations concerning time deductions authorized by this section ~~and his regulations concerning prisoner conduct issued pursuant to G.S. 15A-1340.7~~ shall be distributed to and followed by local jail administrators with regard to sentenced jail prisoners.

(f) The provisions of this section do not apply to persons sentenced to a term of special probation under G.S. 15A-1344(e) or ~~G.S. 15A-1351(a) or to persons convicted pursuant to G.S. 130A-25 of failing to obtain the treatment required by Part 3 or Part 5 of Article 6 of Chapter 130A or of violating G.S. 130A-144(f) or G.S. 130A-145.~~ G.S. 15A-1351(a)."

Sec. 33. G.S. 148-32.1 reads as rewritten:

"**§ 148-32.1. Local confinement, costs, alternate facilities, parole, work release.**

(a) The Department of Correction shall pay each local confinement facility a standard sum set by the General Assembly in its appropriation acts at a per day, per inmate rate, for the cost of providing food, clothing, personal items, supervision and necessary ordinary medical services to those inmates committed to the custody of the local confinement facility to serve sentences of 30 days or more. This reimbursement shall not include any period of detention prior to actual commitment by the sentencing

court. The Department shall also pay to the local confinement facility extraordinary medical expenses incurred for the inmates, defined as follows:

(1) Medical expenses incurred as a result of providing health care to an inmate as an inpatient (hospitalized);

(2) Other medical expenses when the total cost exceeds thirty-five dollars ($35.00) per occurrence or illness as a result of providing health care to an inmate as an outpatient (nonhospitalized); and

(3) Cost of replacement of eyeglasses and dental prosthetic devices if those eyeglasses or devices are broken while the inmate is incarcerated, provided the inmate was using the eyeglasses or devices at the time of his commitment and then only if prior written consent of the Department is obtained by the local facility.

(b) In the event that the custodian of the local confinement facility certifies in writing to the clerk of the superior court in the county in which said local confinement facility is located that the local confinement facility is filled to capacity, or that the facility cannot reasonably accommodate any more prisoners due to segregation requirements for particular prisoners, or that the custodian anticipates, in light of local experiences, an influx of temporary prisoners at that time, or if the local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221, any judge of the district court in the district court district as defined in G.S. 7A-133 where the facility is located, or any superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the facility is located may order that the prisoner be transferred to any other qualified local confinement facility within that district or within another such district where space is available, including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the prisoner is a non-violent misdemeanant, which local facility shall accept the transferred prisoner, if the prison population has exceeded the limits established in G.S. 148-4.1(d). If no such local confinement facility is available, then any such judge may order the prisoner transferred to such camp or facility as the proper authorities of the Department of Correction shall designate, notwithstanding that the term of imprisonment of the prisoner is 180 days or less. In no event, however, shall a prisoner whose term of imprisonment is less than 30 days be assigned or ordered transferred to any such camp or facility.

(c) When a prisoner <u>sentenced for a conviction of impaired driving under G.S. 20-138.1</u> is assigned to a local confinement facility pursuant to this section, the clerk of the superior court in the county in which the sentence was imposed shall immediately forward a copy of the commitment order to the Parole Commission so that the prisoner will be eligible for parole pursuant to G.S. 15A-1371.

(d) When a prisoner serving a sentence of 30 days or more in a local confinement facility is placed on work release pursuant to a recommendation of the sentencing court, the custodian of the facility shall forward the prisoner's work-release earnings to the Department of Correction, which shall disburse the earnings as determined under G.S. 148-33.1(f). When a prisoner serving a sentence of 30 days or more in a local confinement facility is placed on work release pursuant to an order of the sentencing

court, the custodian of the facility shall forward the prisoner's work-release earnings to the clerk of the court that sentenced the prisoner or to the Department of Correction, as provided in the prisoner's commitment order. The clerk or the Department, as appropriate, shall disburse the earnings as provided in the prisoner's commitment order. Upon agreement between the Department of Correction and the custodian of the local confinement facility, however, the clerk may disburse to the local confinement facility the amount of the earnings to be paid for the cost of the prisoner's keep, and that amount shall be set off against the reimbursement to be paid by the Department to the local confinement facility pursuant to G.S. 148-32.1(a).

(e) Upon entry of a prisoner serving a sentence of imprisonment for impaired driving under G.S. 20-138.1 into a local confinement facility pursuant to this section, the custodian of the local confinement facility shall forward to the Parole Commission information pertaining to the prisoner so as to make him eligible for parole consideration pursuant to G.S. 15A-1371. Such information shall include date of incarceration, jail credit, and such other information as may be required by the Parole Commission. The Parole Commission shall approve a form upon which the custodian shall furnish this information, which form will be provided to the custodian by the Department of Correction."

Sec. 34. Article 3B of Chapter 148 of the General Statutes, Facilities and Programs for Youthful Offenders, is repealed.

Sec. 35. G.S. 7A-273(1) reads as rewritten:

"(1) In ~~misdemeanor or~~ infraction cases, in which the maximum penalty that can be imposed is not more than fifty dollars ($50.00), exclusive of costs, or in Class 3 misdemeanors other than the types of offenses specified in subdivision (2) of this section, ~~in which the maximum punishment which can be adjudged cannot exceed imprisonment for 30 days, or a fine of fifty dollars ($50.00) or a penalty of not more than fifty dollars ($50.00), exclusive of costs,~~ to accept guilty pleas or admissions of responsibility and enter judgment;".

Sec. 36. This act becomes effective January 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.