

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 277*
Committee Substitute Favorable 5/24/93
Committee Substitute #2 Favorable 7/16/93
Senate Committee Substitute Adopted 7/23/93

Short Title: Structured Sentencing-2.

(Public)

Sponsors:

Referred to: Appropriations.

February 25, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR STRUCTURED SENTENCING IN NORTH
3 CAROLINA CONSISTENT WITH THE STANDARD OPERATING CAPACITY
4 OF THE DEPARTMENT OF CORRECTION AND LOCAL CONFINEMENT
5 FACILITIES AND TO REDEFINE STATE AND COUNTY RESPONSIBILITIES
6 FOR THE CONFINEMENT OF MISDEMEANANTS.

7 The General Assembly of North Carolina enacts:

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

10 **"ARTICLE 81B.**

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

12 **"PART 1. GENERAL PROVISIONS.**

13 **"§ 15A-1340.10. Applicability of structured sentencing.**

14 This Article applies to criminal offenses in North Carolina, other than impaired
15 driving under G.S. 20-138.1, that occur on or after January 1, 1995.

16 **"§ 15A-1340.11. Definitions.**

17 The following definitions apply in this Article:

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

- 1 (2) Community punishment. – A sentence in a criminal case that does not
2 include an active punishment or an intermediate punishment.
- 3 (3) Day-reporting center. – A facility to which offenders are required, as a
4 condition of probation, to report on a daily or other regular basis at
5 specified times for a specified length of time to participate in activities
6 such as counseling, treatment, social skills training, or employment
7 training.
- 8 (4) Electronic monitoring. – A condition of probation in which the
9 offender is required to remain in one or more specified places for a
10 specified period or periods each day, and in which the offender shall
11 wear a device which permits the supervising agency to monitor the
12 offender's compliance with the condition electronically.
- 13 (5) Intensive probation. – Probation that requires the offender to submit to
14 supervision by officers assigned to the Intensive Probation Program
15 established pursuant to G.S. 143B-262(c), and to comply with the rules
16 adopted for that Program.
- 17 (6) Intermediate punishment. – A sentence in a criminal case that places
18 an offender on supervised probation and includes at least one of the
19 following conditions:
- 20 a. Special probation as defined in G.S. 15A-1351(a).
21 b. Assignment to a residential program.
22 c. Electronic monitoring.
23 d. Intensive probation.
24 e. Assignment to a day-reporting center.
- 25 In addition, a sentence to regular supervised probation imposed
26 pursuant to a community penalties plan as defined in G.S. 7A-771(2) is
27 an intermediate punishment, regardless of whether any of the above
28 conditions is imposed, if the plan is accepted by the court and the plan
29 does not include active punishment.
- 30 (7) Prior conviction. – A person has a prior conviction when, on the date a
31 criminal judgment is entered, the person being sentenced has been
32 previously convicted of a crime:
- 33 a. In the district court, and the person has not given notice of
34 appeal and the time for appeal has expired; or
35 b. In the superior court, regardless of whether the conviction is on
36 appeal to the appellate division; or
37 c. In the courts of the United States, another state, the armed
38 services of the United States, or another county, regardless of
39 whether the offense would be a crime if it occurred in North
40 Carolina,
41 regardless of whether the crime was committed before or after the
42 effective date of this Article.
- 43 (8) Residential program. – A program in which the offender, as a
44 condition of probation, is required to reside in a facility for a specified

1 period and to participate in activities such as counseling, treatment,
2 social skills training, or employment training, conducted at the
3 residential facility or at other specified locations.

4 **"§ 15A-1340.12. Purposes of sentencing.**

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

10 **"PART 2. FELONY SENTENCING.**

11 **"§ 15A-1340.13. Procedure and incidents of sentence of imprisonment for felonies.**

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

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

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

28 (d) Service of Minimum Required; Earned Time Authorization. – An offender
29 sentenced to an active punishment shall serve the minimum term imposed. The
30 maximum term may be reduced to, but not below, the minimum term by earned time
31 credits awarded to an offender by the Department of Correction or the custodian of the
32 local confinement facility, pursuant to rules adopted in accordance with law.

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

1 (f) Suspension of Sentence. – Unless otherwise provided, the court shall not
2 suspend the sentence of imprisonment if the class of offense and prior record level does
3 not permit community or intermediate punishment as a sentence disposition. The court
4 shall suspend the sentence of imprisonment if the class of offense and prior record level
5 requires community or intermediate punishment as a sentence disposition. The court
6 may suspend the sentence of imprisonment if the class of offense and prior record level
7 authorizes, but does not require, active punishment as a sentence disposition.

8 (g) Dispositional Deviation for Extraordinary Mitigation. – Except as provided in
9 subsection (g1) of this section, the court may impose an intermediate punishment for a
10 class of offense and prior record level that requires the imposition of an active
11 punishment if it finds in writing all of the following:

- 12 (1) That extraordinary mitigating factors of a kind significantly greater
13 than in the normal case are present.
- 14 (2) Those factors substantially outweigh any factors in aggravation.
- 15 (3) It would be a manifest injustice to impose an active punishment in the
16 case.

17 The court shall consider evidence of extraordinary mitigating factors, but the decision to
18 find any such factors, or to impose an intermediate punishment is in the discretion of the
19 court. The extraordinary mitigating factors which the court finds shall be specified in
20 its judgment.

21 (g1) Exceptions When Extraordinary Mitigation Shall Not Be Used. – The court
22 shall not impose an intermediate sanction pursuant to subsection (g) of this section if:

- 23 (1) The offense is a Class A offense;
- 24 (2) The offense is a drug trafficking offense under G.S. 90-95(h); or
- 25 (3) The defendant has five or more points as determined by G.S. 15A-
26 1340.14.

27 **"§ 15A-1340.14. Prior record level for felony sentencing.**

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

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

- 32 (1) For each prior felony Class A conviction, 10 points.
- 33 (2) For each prior felony Class B, C, or D conviction, 6 points.
- 34 (3) For each prior felony Class E, F, or G conviction, 4 points.
- 35 (4) For each prior felony Class H or I conviction, 2 points.
- 36 (5) For each prior misdemeanor conviction, 1 point.
- 37 (6) If all the elements of the present offense are included in the prior
38 offense, 1 point.
- 39 (7) If the offense was committed while the offender was on probation or
40 parole, or while the offender was serving a sentence of imprisonment,
41 or while the offender was on escape from a correctional institution
42 while serving a sentence of imprisonment, 1 point.

43 (c) Prior Record Levels for Felony Sentencing. – The prior record levels for
44 felony sentencing are:

- 1 (1) Level I – 0 points.
- 2 (2) Level II – At least 1, but not more than 4 points.
- 3 (3) Level III – At least 5, but not more than 8 points.
- 4 (4) Level IV – At least 9, but not more than 14 points.
- 5 (5) Level V – At least 15, but not more than 18 points.
- 6 (6) Level VI – At least 19 points.

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

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

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

26 (f) Proof of Prior Convictions. – A prior conviction shall be proved by any of the
27 following methods:

- 28 (1) Stipulation of the parties.
- 29 (2) An original or copy of the court record of the prior conviction.
- 30 (3) A copy of records maintained by the Division of Criminal Information,
31 the Division of Motor Vehicles, or of the Administrative Office of the
32 Courts.
- 33 (4) Any other method found by the court to be reliable.

34 The State bears the burden of proving, by a preponderance of the evidence, that a
35 prior conviction exists and that the offender before the court is the same person as the
36 offender named in the prior conviction. The original or a copy of the court records or a
37 copy of the records maintained by the Division of Criminal Information, the Division of
38 Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as
39 that by which the offender is charged, is **prima facie** evidence that the offender named
40 is the same person as the offender before the court, and that the facts set out in the
41 record are true. For purposes of this subsection, 'a copy' includes a paper writing
42 containing a reproduction of a record maintained electronically on a computer or other
43 data processing equipment, and a document produced by a facsimile machine. The
44 prosecutor shall make all feasible efforts to obtain and present to the court the offender's

1 full record. Evidence presented by either party at trial may be utilized to prove prior
2 convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion
3 is made pursuant to that section during the sentencing stage of the criminal action, either
4 the State or the offender is entitled to a continuance of the sentencing hearing. If asked
5 by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the
6 defendant's prior criminal record to the defendant within a reasonable time sufficient to
7 allow the defendant to determine if the record available to the prosecutor is accurate.

8 **"§ 15A-1340.15. Multiple convictions.**

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

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

19 **"§ 15A-1340.16. Aggravated and mitigated sentences.**

20 (a) Generally, Burden of Proof. – The court shall consider evidence of
21 aggravating or mitigating factors present in the offense that make an aggravated or
22 mitigated sentence appropriate, but the decision to depart from the presumptive range is
23 in the discretion of the court. The State bears the burden of proving by a preponderance
24 of the evidence that an aggravating factor exists, and the offender bears the burden of
25 proving by a preponderance of the evidence that a mitigating factor exists.

26 (b) When Aggravated or Mitigated Sentence Allowed. – If the court finds that
27 aggravating or mitigating factors exist, it may depart from the presumptive range of
28 sentences specified in G.S. 15A-1340.17(c)(2). If the court finds that aggravating
29 factors are present and are sufficient to outweigh any mitigating factors that are present,
30 it may impose a sentence that is permitted by the aggravated range described in G.S.
31 15A-1340.17(c)(4). If the court finds that mitigating factors are present and are
32 sufficient to outweigh any aggravating factors that are present, it may impose a sentence
33 that is permitted by the mitigated range described in G.S. 15A-1340.17(c)(3).

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

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

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

- 1 (2) The defendant joined with more than one other person in committing
2 the offense and was not charged with committing a conspiracy.
- 3 (3) The offense was committed for the purpose of avoiding or preventing a
4 lawful arrest or effecting an escape from custody.
- 5 (4) The defendant was hired or paid to commit the offense.
- 6 (5) The offense was committed to disrupt or hinder the lawful exercise of
7 any governmental function or the enforcement of laws.
- 8 (6) The offense was committed against a present or former: law
9 enforcement officer, employee of the Department of Correction, jailer,
10 fireman, emergency medical technician, ambulance attendant, justice
11 or judge, clerk or assistant or deputy clerk of court, magistrate,
12 prosecutor, juror, or witness against the defendant, while engaged in
13 the performance of that person's official duties or because of the
14 exercise of that person's official duties.
- 15 (7) The offense was especially heinous, atrocious, or cruel.
- 16 (8) The defendant knowingly created a great risk of death to more than
17 one person by means of a weapon or device which would normally be
18 hazardous to the lives of more than one person.
- 19 (9) The defendant held public office at the time of the offense and the
20 offense related to the conduct of the office.
- 21 (10) The defendant was armed with or used a deadly weapon at the time of
22 the crime.
- 23 (11) The victim was very young, or very old, or mentally or physically
24 infirm, or handicapped.
- 25 (12) The defendant committed the offense while on pretrial release on
26 another charge.
- 27 (13) The defendant involved a person under the age of 16 in the
28 commission of the crime.
- 29 (14) The offense involved an attempted or actual taking of property of great
30 monetary value or damage causing great monetary loss, or the offense
31 involved an unusually large quantity of contraband.
- 32 (15) The defendant took advantage of a position of trust or confidence to
33 commit the offense.
- 34 (16) The offense involved the sale or delivery of a controlled substance to a
35 minor.
- 36 (17) The offense for which the defendant stands convicted was committed
37 against a victim because of the victim's race, color, religion,
38 nationality, or country of origin.
- 39 (18) The defendant does not support the defendant's family.
- 40 (19) The serious injury inflicted upon the victim is permanent and
41 debilitating.
- 42 (20) Any other aggravating factor reasonably related to the purposes of
43 sentencing.

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

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

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

7 (1) The defendant committed the offense under duress, coercion, threat, or
8 compulsion that was insufficient to constitute a defense but
9 significantly reduced the defendant's culpability.

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

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

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

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

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

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

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

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

29 (10) The defendant reasonably believed that the defendant's conduct was
30 legal.

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

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

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

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

39 (15) The defendant has accepted responsibility for the defendant's criminal
40 conduct.

41 (16) The defendant has entered and is currently involved in or has
42 successfully completed a drug treatment program or an alcohol
43 treatment program subsequent to arrest and prior to trial.

44 (17) The defendant supports the defendant's family.

1 (18) The defendant has a support system in the community.

2 (19) The defendant has a positive employment history or is gainfully
3 employed.

4 (20) The defendant has a good treatment prognosis, and a workable
5 treatment plan is available.

6 (21) Any other mitigating factor reasonably related to the purposes of
7 sentences.

8 **"§ 15A-1340.17. Punishment limits for each class of offense and prior record level.**

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

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

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

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

26 (2) A presumptive range of minimum durations, if the sentence of
27 imprisonment is neither aggravated or mitigated; any minimum term of
28 imprisonment in that range is permitted unless the court finds pursuant
29 to G.S. 15A-1340.16 that an aggravated or mitigated sentence is
30 appropriate. The presumptive range is the middle of the three ranges
31 in the cell.

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

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

42
43 **PRIOR RECORD LEVEL**
44

1		<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>VI</u>		
2		<u>0 Pts</u>	<u>1-4 Pts</u>	<u>5-8 Pts</u>		<u>9-14 Pts</u>	<u>15-18 Pts</u>	<u>19+ Pts</u>	
3									
4	<u>A</u>	<u>Life Imprisonment or Death as Established by Statute</u>							
5									
6									
7		<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>DISPOSITION</u>	
8		<u>135-169</u>	<u>163-204</u>		<u>190-238</u>	<u>216-270</u>	<u>243-304</u>	<u>270-338</u>	
9		<u>Aggravated</u>							
10	<u>B</u>	<u>108-135</u>	<u>130-163</u>		<u>152-190</u>	<u>173-216</u>	<u>194-243</u>	<u>216-270</u>	<u>PRESUMPTIVE</u>
11		<u>81-108</u>	<u>98-130</u>		<u>114-152</u>	<u>130-173</u>	<u>146-194</u>	<u>162-216</u>	
12		<u>Mitigated</u>							
13									
14		<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>DISPOSITION</u>	
15		<u>63-79</u>	<u>86-108</u>	<u>100-125</u>		<u>115-144</u>	<u>130-162</u>	<u>145-181</u>	<u>Aggravated</u>
16	<u>C</u>	<u>50-63</u>	<u>69-86</u>		<u>80-100</u>	<u>92-115</u>	<u>104-130</u>	<u>116-145</u>	<u>PRESUMPTIVE</u>
17		<u>38-50</u>	<u>52-69</u>		<u>60-80</u>	<u>69-92</u>	<u>78-104</u>	<u>87-116</u>	<u>Mitigated</u>
18									
19		<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>DISPOSITION</u>	
20		<u>55-69</u>	<u>66-82</u>		<u>89-111</u>	<u>101-126</u>	<u>115-144</u>	<u>126-158</u>	<u>Aggravated</u>
21	<u>D</u>	<u>44-55</u>	<u>53-66</u>		<u>71-89</u>	<u>81-101</u>	<u>92-115</u>	<u>101-126</u>	<u>PRESUMPTIVE</u>
22		<u>33-44</u>	<u>40-53</u>		<u>53-71</u>	<u>61-81</u>	<u>69-92</u>	<u>76-101</u>	<u>Mitigated</u>
23									
24		<u>I/A</u>	<u>I/AA</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>DISPOSITION</u>		
25		<u>25-31</u>	<u>29-36</u>	<u>34-42</u>	<u>46-58</u>	<u>53-66</u>	<u>59-74</u>	<u>Aggravated</u>	
26	<u>E</u>	<u>20-25</u>	<u>23-29</u>		<u>27-34</u>	<u>37-46</u>	<u>42-53</u>	<u>47-59</u>	<u>PRESUMPTIVE</u>
27		<u>15-20</u>	<u>17-23</u>		<u>20-27</u>	<u>28-37</u>	<u>32-42</u>	<u>35-47</u>	<u>Mitigated</u>
28									
29		<u>I/A</u>	<u>I/AI/A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>DISPOSITION</u>		
30		<u>16-20</u>	<u>19-24</u>	<u>21-26</u>	<u>25-31</u>	<u>34-42</u>	<u>39-49</u>	<u>Aggravated</u>	
31	<u>F</u>	<u>13-16</u>	<u>15-19</u>		<u>17-21</u>	<u>20-25</u>	<u>27-34</u>	<u>31-39</u>	<u>PRESUMPTIVE</u>
32		<u>10-13</u>	<u>11-15</u>		<u>13-17</u>	<u>15-20</u>	<u>20-27</u>	<u>23-31</u>	<u>Mitigated</u>
33									
34		<u>I/A</u>	<u>I/AI/A</u>	<u>I/A</u>	<u>A</u>	<u>A</u>	<u>DISPOSITION</u>		
35		<u>13-16</u>	<u>15-19</u>	<u>16-20</u>	<u>20-25</u>	<u>21-26</u>	<u>29-36</u>	<u>Aggravated</u>	
36	<u>G</u>	<u>10-13</u>	<u>12-15</u>		<u>13-16</u>	<u>16-20</u>	<u>17-21</u>	<u>23-29</u>	<u>PRESUMPTIVE</u>
37		<u>8-10</u>	<u>9-12</u>		<u>10-13</u>	<u>12-16</u>	<u>13-17</u>	<u>17-23</u>	<u>Mitigated</u>
38									
39		<u>C/I</u>	<u>I</u>	<u>I/A</u>	<u>I/A</u>	<u>A</u>	<u>DISPOSITION</u>		
40		<u>6-8</u>	<u>8-10</u>		<u>10-12</u>	<u>11-14</u>	<u>15-19</u>	<u>20-25</u>	<u>Aggravated</u>
41	<u>H</u>	<u>5-6</u>	<u>6-8</u>		<u>8-10</u>	<u>9-11</u>	<u>12-15</u>	<u>16-20</u>	<u>PRESUMPTIVE</u>
42		<u>4-5</u>	<u>4-6</u>	<u>6-8</u>	<u>7-9</u>	<u>9-12</u>	<u>12-16</u>	<u>Mitigated</u>	
43									
44		<u>C</u>	<u>C/II</u>	<u>I/A</u>	<u>I/A</u>	<u>I/A</u>	<u>DISPOSITION</u>		

1	6-8	6-86-8	8-10	9-11	10-12	Aggravated		
2	I 4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE	
3	3-4	3-44-5	4-6	5-7	6-8	Mitigated		

(d) Maximum Sentences Specified for Class F through Class I Felonies. – 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) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class F through Class I felonies. The first figure in each cell in the table is the minimum term and the second is the maximum term.

13	4-5	5-6	6-8	7-9	8-10	9-11	10-12	11-14
14	12-15	13-16	14-17	15-18	16-20	17-21	18-22	19-23
15	20-24	21-26	22-27	23-28	24-29	25-30	26-32	27-33
16	28-34	29-35	30-36	31-38	32-39	33-40	34-41	35-42
17	36-44	37-45	38-46	39-47	40-48	41-50	42-51	43-52
18	44-53	45-54	46-56	47-57	48-58	49-59		

(e) Maximum Sentences Specified for Class B through Class E Felonies. – 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) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class B through Class E felonies. The first figure in each cell of the table is the minimum term and the second is the maximum term.

27	15-27	16-29	17-30	18-31	19-32	20-33	21-35	22-36
28	23-37	24-38	25-39	26-41	27-42	28-43	29-44	30-45
29	31-47	32-48	33-49	34-50	35-51	36-53	37-54	38-55
30	39-56	40-57	41-59	42-60	43-61	44-62	45-63	46-65
31	47-66	48-67	49-68	50-69	51-71	52-72	53-73	54-74
32	55-75	56-77	57-78	58-79	59-80	60-81	61-83	62-84
33	63-85	64-86	65-87	66-89	67-90	68-91	69-92	70-93
34	71-95	72-96	73-97	74-98	75-99	76-101	77-102	78-103
35	79-104	80-105	81-107	82-108	83-109	84-110	85-111	86-113
36	87-114	88-115	89-116	90-117	91-119	92-120	93-121	94-122
37	95-123	96-125	97-126	98-127	99-128	100-129	101-131	102-132
38	103-133	104-134	105-135	106-137	107-138	108-139	109-140	110-141
39	111-143	112-144	113-145	114-146	115-147	116-149	117-150	118-151
40	119-152	120-153	121-155	122-156	123-157	124-158	125-159	126-161
41	127-162	128-163	129-164	130-165	131-167	132-168	133-169	134-170
42	135-171	136-173	137-174	138-175	139-176	140-177	141-179	142-180
43	143-181	144-182	145-183	146-185	147-186	148-187	149-188	150-189
44	151-191	152-192	153-193	154-194	155-195	156-197	157-198	158-199

1	<u>159-200</u>	<u>160-201</u>	<u>161-203</u>	<u>162-204</u>	<u>163-205</u>	<u>164-206</u>	<u>165-207</u>	<u>166-209</u>
2	<u>167-210</u>	<u>168-211</u>	<u>169-212</u>	<u>170-213</u>	<u>171-215</u>	<u>172-216</u>	<u>173-217</u>	<u>174-218</u>
3	<u>175-219</u>	<u>176-221</u>	<u>177-222</u>	<u>178-223</u>	<u>179-224</u>	<u>180-225</u>	<u>181-227</u>	<u>182-228</u>
4	<u>183-229</u>	<u>184-230</u>	<u>185-231</u>	<u>186-233</u>	<u>187-234</u>	<u>188-235</u>	<u>189-236</u>	<u>190-237</u>
5	<u>191-239</u>	<u>192-240</u>	<u>193-241</u>	<u>194-242</u>	<u>195-243</u>	<u>196-245</u>	<u>197-246</u>	<u>198-247</u>
6	<u>199-248</u>	<u>200-249</u>	<u>201-251</u>	<u>202-252</u>	<u>203-253</u>	<u>204-254</u>	<u>205-255</u>	<u>206-257</u>
7	<u>207-258</u>	<u>208-259</u>	<u>209-260</u>	<u>210-261</u>	<u>211-263</u>	<u>212-264</u>	<u>213-265</u>	<u>214-266</u>
8	<u>215-267</u>	<u>216-269</u>	<u>217-270</u>	<u>218-271</u>	<u>219-272</u>	<u>220-273</u>	<u>221-275</u>	<u>222-276</u>
9	<u>223-277</u>	<u>224-278</u>	<u>225-279</u>	<u>226-281</u>	<u>227-282</u>	<u>228-283</u>	<u>229-284</u>	<u>230-285</u>
10	<u>231-287</u>	<u>232-288</u>	<u>233-289</u>	<u>234-290</u>	<u>235-291</u>	<u>236-293</u>	<u>237-294</u>	<u>238-295</u>
11	<u>239-296</u>	<u>240-297</u>	<u>241-299</u>	<u>242-300</u>	<u>243-301</u>	<u>244-302</u>	<u>245-303</u>	<u>246-305</u>
12	<u>247-306</u>	<u>248-307</u>	<u>249-308</u>	<u>250-309</u>	<u>251-311</u>	<u>252-312</u>	<u>253-313</u>	<u>254-314</u>
13	<u>255-315</u>	<u>256-317</u>	<u>257-318</u>	<u>258-319</u>	<u>259-320</u>	<u>260-321</u>	<u>261-323</u>	<u>262-324</u>
14	<u>263-325</u>	<u>264-326</u>	<u>265-327</u>	<u>266-329</u>	<u>267-330</u>	<u>268-331</u>	<u>269-332</u>	<u>270-333</u>
15	<u>271-335</u>	<u>272-336</u>	<u>273-337</u>	<u>274-338</u>	<u>275-339</u>	<u>276-341</u>	<u>277-342</u>	<u>278-343</u>
16	<u>279-344</u>	<u>280-345</u>	<u>281-347</u>	<u>282-348</u>	<u>283-349</u>	<u>284-350</u>	<u>285-351</u>	<u>286-353</u>
17	<u>287-354</u>	<u>288-355</u>	<u>289-356</u>	<u>290-357</u>	<u>291-359</u>	<u>292-360</u>	<u>293-361</u>	<u>295-363</u>
18	<u>295-363</u>	<u>296-365</u>	<u>297-366</u>	<u>298-367</u>	<u>299-368</u>	<u>300-369</u>	<u>301-371</u>	<u>302-372</u>
19	<u>303-373</u>	<u>304-374</u>	<u>305-375</u>	<u>306-377</u>	<u>307-378</u>	<u>308-379</u>	<u>309-380</u>	<u>310-381</u>
20	<u>311-383</u>	<u>312-384</u>	<u>313-385</u>	<u>314-386</u>	<u>315-387</u>	<u>316-389</u>	<u>317-390</u>	<u>318-391</u>
21	<u>319-392</u>	<u>320-393</u>	<u>321-395</u>	<u>322-396</u>	<u>323-397</u>	<u>324-398</u>	<u>325-399</u>	<u>326-401</u>
22	<u>327-402</u>	<u>328-403</u>	<u>329-404</u>	<u>330-405</u>	<u>331-407</u>	<u>332-408</u>	<u>333-409</u>	<u>334-410</u>
23	<u>335-411</u>	<u>336-413</u>	<u>337-414</u>	<u>338-415</u>	<u>339-416</u>			

"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 shall contain a sentence disposition specified for the class of offense and prior conviction level, and any sentence of imprisonment shall 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 and earned time credits authorized by G.S. 162-60, or earned time credits authorized by G.S. 15A-1355(c), if applicable, an offender whose sentence of imprisonment is activated shall serve each day of the term imposed.

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

(d) Earned Time Authorization. – An offender sentenced to a term of imprisonment that is activated is eligible to receive earned time credit for misdemeanant offenders awarded by the Department of Correction or the custodian of a local

1 confinement facility, pursuant to rules adopted in accordance with law. These rules
2 shall not award misdemeanor offenders more than four days of earned time credit per
3 month of incarceration.

4 **"§ 15A-1340.21. Prior conviction level for misdemeanor sentencing.**

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

8 (b) Prior Conviction Levels for Misdemeanor Sentencing. – The prior conviction
9 levels for misdemeanor sentencing are:

10 (1) Level I – 0 prior convictions.

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

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

13 (c) Proof of Prior Convictions. – A prior conviction shall be proved by any of the
14 following methods:

15 (1) Stipulation of the parties.

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

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

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

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

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

39 **"§ 15A-1340.22. Multiple convictions.**

40 (a) Limits on Consecutive Sentences. – If the court elects to impose consecutive
41 sentences for two or more misdemeanors and the most serious misdemeanor is classified
42 in Class 1 or Class 2, the cumulative length of the sentences of imprisonment shall not
43 exceed twice the maximum sentence authorized for the class and prior conviction level

1 of the most serious offense. Consecutive sentences shall not be imposed if all
 2 convictions are for Class 3 misdemeanors.

3 (b) Consolidation of Sentences. – If an offender is convicted of more than one
 4 offense at the same session of court, the court may consolidate the offenses for
 5 judgment and impose a single judgment for the consolidated offenses. Any sentence
 6 imposed shall be consistent with the appropriate prior conviction level of the most
 7 serious offense.

8 **"§ 15A-1340.23. Punishment limits for each class of offense and prior conviction**
 9 **level.**

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

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

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

- 27 (1) A sentence disposition or dispositions: 'C' indicates that a community
 28 punishment is authorized; 'I' indicates that an intermediate punishment
 29 is authorized; and 'A' indicates that an active punishment is authorized;
 30 and
- 31 (2) A range of durations for the sentence of imprisonment: any sentence
 32 within the duration specified is permitted.

34 PRIOR CONVICTION LEVELS

35 MISDEMEANOR

<u>OFFENSE</u>	<u>LEVEL I</u>	<u>LEVEL II</u>	<u>LEVEL III</u>
<u>CLASS</u>	<u>No Prior Convictions</u>	<u>One to Four Prior Convictions</u>	<u>Five or More Prior Convictions</u>
<u>1</u>	<u>1-45 days C</u>	<u>1-45 days C/I/A</u>	<u>1-120 days C/I/A</u>
<u>2</u>	<u>1-30 days C</u>	<u>1-45 days C/I 1-60 days C/I/A</u>	
<u>3</u>	<u>1-10 days C</u>	<u>1-15 days C/I 1-20 days C/I/A."</u>	

- 1
2 Sec. 2. G.S. 14-1.1 is repealed.
3 Sec. 2.1. G.S. 14-2 is repealed.
4 Sec. 3. G.S. 14-2.1 is repealed.
5 Sec. 4. G.S. 14-2.2 is repealed.
6 Sec. 5. G.S. 14-2.4 reads as rewritten:

7 **"§ 14-2.4. Punishment for conspiracy to commit a felony.**

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

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

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

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

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

22 **"§ 14-2.5. Punishment for attempt to commit a felony or misdemeanor.**

23 Unless a different classification is expressly stated, an attempt to commit a
24 misdemeanor or a felony is punishable under the next lower classification as the offense
25 which the offender attempted to commit. An attempt to commit a Class I felony is a
26 Class 1 misdemeanor, and an attempt to commit a Class 3 misdemeanor is a Class 3
27 misdemeanor."

28 Sec. 6.1. Chapter 14 of the General Statutes is amended by adding a new
29 section to read:

30 **"§ 14.2.6. Punishment for solicitation to commit a felony or misdemeanor.**

31 (a) Unless a different classification is expressly stated, a person who solicits
32 another person to commit a felony is guilty of a felony that is two classes lower than the
33 felony the person solicited the other person to commit, except that a solicitation to
34 commit a Class H felony is a Class 1 misdemeanor, and a solicitation to commit a Class
35 I felony is a Class 2 misdemeanor.

36 (b) Unless a different classification is expressly stated, a person who solicits
37 another person to commit a misdemeanor is guilty of a Class 3 misdemeanor."

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

39 **"§ 14-3. Punishment of misdemeanors, infamous offenses, offenses committed in**
40 **secrecy and malice, or with deceit and intent to defraud, or with ethnic**
41 **animosity.**

42 (a) Except as provided in subsections (b) and (c), every person who shall be
43 convicted of any misdemeanor for which no specific classification and no specific
44 punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor. by

1 ~~fine, by imprisonment for a term not exceeding two years, or by both, in the discretion~~
2 ~~of the court.—Any misdemeanor that has a specific punishment, but is not assigned a~~
3 ~~classification by the General Assembly pursuant to law is classified as follows, based on~~
4 ~~the maximum punishment allowed by law for the offense as it existed on the effective~~
5 ~~date of Article 81B of Chapter 15A of the General Statutes.~~

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

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

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

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

16 (b) If a misdemeanor offense as to which no specific punishment is prescribed be
17 infamous, done in secrecy and malice, or with deceit and intent to defraud, the offender
18 shall, except where the offense is a conspiracy to commit a misdemeanor, be guilty of a
19 Class H felony.

20 (c) If any Class 2 or Class 3 misdemeanor ~~offense with punishment less than the~~
21 ~~punishment for a general misdemeanor~~ is committed because of the victim's race, color,
22 religion, nationality, or country of origin, the offender shall be guilty of a ~~general~~-Class
23 1 misdemeanor. If any ~~general~~-Class 1 misdemeanor offense is committed because of
24 the victim's race, color, religion, nationality, or country of origin, the offender shall be
25 guilty of a Class ~~H~~-I felony."

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

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

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

34 **"§ 14-7.6. Sentencing of habitual felons.**

35 When an habitual felon ~~as defined in this Article~~ shall commit any felony classified
36 as a Class E, F, G, H, or I felony under the laws of the State of North Carolina, he must,
37 upon conviction or plea of guilty under indictment as herein ~~provided~~-provided, be
38 punished as a Class D felon. In determining the prior record level, convictions used to
39 establish a person's status as a habitual felon shall not be used. For purposes of this
40 section, habitual felon is defined as in G.S. 14-7.1, except that only one of the three
41 felony convictions may be for a Class H, I, or J felony. (except where the death penalty
42 or a sentence of life imprisonment is imposed) be sentenced as a Class C felon.
43 ~~Notwithstanding any other provision of law, a person sentenced under this Article shall~~
44 ~~serve a term of not less than seven years in prison, excluding gain time granted under~~

1 ~~G.S. 148-13. A person sentenced under this Article shall receive a sentence of at least~~
 2 ~~14 years in the State's prison and shall be entitled to credit for good behavior under G.S.~~
 3 ~~15A-1340.7. The sentencing judge may not suspend the sentence and may not place the~~
 4 ~~person sentenced on probation. Sentences imposed under this Article shall run~~
 5 ~~consecutively with and shall commence at the expiration of any sentence being served~~
 6 ~~by the person sentenced hereunder."~~

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

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

- 12 (1) Informing him that he has a right to remain silent and that any
- 13 statement he makes may be used against him;
- 14 (2) Determining that he understands the nature of the charge;
- 15 (3) Informing him that he has a right to plead not guilty;
- 16 (4) Informing him that by his plea he waives his right to trial by jury and
- 17 his right to be confronted by the witnesses against him;
- 18 (5) Determining that the defendant, if represented by counsel, is satisfied
- 19 with his representation;
- 20 (6) Informing him of the maximum possible sentence on the charge for the
- 21 class of offense for which the defendant is being sentenced, including
- 22 that possible from consecutive sentences, and of the mandatory
- 23 minimum sentence, if any, on the charge; and
- 24 (7) Informing him that if he is not a citizen of the United States of
- 25 America, a plea of guilty or no contest may result in deportation, the
- 26 exclusion from admission to this country, or the denial of
- 27 naturalization under federal law."

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

29 **"§ 15A-1301. Order of commitment to imprisonment when not otherwise specified.**

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

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

40 **"§ 15A-1331. Authorized sentences; conviction.**

41 (a) The criminal judgment entered against a person in either district or superior
 42 court ~~may~~ shall be consistent with the provisions of Article 81B of this Chapter and
 43 contain a sentence disposition consistent with that Article, unless the offense for which
 44 his guilt has been established is not covered by that Article. ~~a capital offense, or unless~~

1 a statute otherwise specifically provides, include a sentence in accordance with the
2 provision of this Article to one or a combination of the following alternatives:

- 3 (1) Probation as authorized by Article 82, Probation, or a term of
4 imprisonment as authorized by Article 83, Imprisonment; or
5 (2) A fine as authorized by Article 84, Fines; or
6 (3) Other punishment authorized or required by law.

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

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

10 "(c) Presentence Commitment for Study. – When the court desires more detailed
11 information as a basis for determining the sentence to be imposed than can be provided
12 by a presentence investigation, the court may commit a defendant to the Department of
13 Correction for study for the shortest period necessary to complete the study, not to
14 exceed 90 days, if that defendant has been charged with or convicted of a any felony or
15 a Class 1 misdemeanor crime or crimes for which he may be imprisoned for more than
16 six months and if he consents. The period of commitment must end when the study is
17 completed, and may not exceed 90 days. The Department must conduct a complete
18 study of a defendant committed to it under this subsection, inquiring into such matters
19 as the defendant's previous delinquency or criminal experience, his social background,
20 his capabilities, his mental, emotional and physical health, and the availability of
21 resources or programs appropriate to the defendant. Upon completion of the study or
22 the end of the 90-day period, whichever occurs first, the Department of Correction must
23 release the defendant to the sheriff of the county in which his case is docketed. The
24 Department must forward the study to the clerk in that county, including whatever
25 recommendations the Department believes will be helpful to a proper resolution of the
26 case. When a defendant is returned from a presentence commitment for study, the
27 conditions of pretrial release which obtained for the defendant before the commitment
28 continue until judgment is entered, unless the conditions are modified under the
29 provisions of G.S. 15A-534(e)."

30 Sec. 14. Article 81A of Chapter 15A of the General Statutes is repealed.

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

32 **"§ 15A-1341. Probation generally.**

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

- 1 (1) ~~Prosecution has been deferred by the prosecutor pursuant to written~~
2 ~~agreement with the defendant, with the approval of the court, for the~~
3 ~~purpose of allowing the defendant to demonstrate his good conduct.~~
4 (2) ~~Each known victim of the crime has been notified of the motion for~~
5 ~~probation by subpoena or certified mail and has been given an~~
6 ~~opportunity to be heard.~~
7 (3) ~~The defendant has not been convicted of any felony or of any~~
8 ~~misdemeanor involving moral turpitude.~~
9 (4) ~~The defendant has not previously been placed on probation and so~~
10 ~~states under oath.~~
11 (5) ~~The defendant is unlikely to commit another offense punishable by a~~
12 ~~term of imprisonment greater than 30 days.~~

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

- 16 (1) Prosecution has been deferred by the prosecutor pursuant to written
17 agreement with the defendant, with the approval of the court, for the
18 purpose of allowing the defendant to demonstrate his good conduct.
19 (2) Each known victim of the crime has been notified of the motion for
20 probation by subpoena or certified mail and has been given an
21 opportunity to be heard.
22 (3) The defendant has not been convicted of any felony or of any
23 misdemeanor involving moral turpitude.
24 (4) The defendant has not previously been placed on probation and so
25 states under oath.
26 (5) The defendant is unlikely to commit another offense other than a Class
27 3 misdemeanor.

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

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

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

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

- 41 (1) Undergo available medical or psychiatric treatment and remain in a
42 specified institution if required for that purpose.

- 1 (2) Attend or reside in a facility providing rehabilitation, counseling,
2 treatment, social skills, or employment training, instruction, recreation,
3 or residence for persons on probation.
- 4 (2a) Submit to a period of imprisonment in a facility for youthful offenders
5 for a minimum of 90 days or a maximum of 120 days under special
6 probation, reference G.S. 15A-1351(a) or G.S. 15A-1344(e), and abide
7 by all rules and regulations as provided in conjunction with the
8 Intensive Motivational Program of Alternative Correctional Treatment
9 (IMPACT), which provides an atmosphere for learning personal
10 confidence, personal responsibility, self-respect, and respect for
11 attitudes and value systems.
- 12 (3) Submit to imprisonment required for special probation under G.S.
13 15A-1351(a) or G.S. 15A-1344(e).
- 14 (3a) Remain in one or more specified places for a specified period or
15 periods each day, and wear a device that permits the defendant's
16 compliance with the condition to be monitored electronically.
- 17 (3b) Submit to supervision by officers assigned to the Intensive Probation
18 Program established pursuant to G.S. 143B-262(c), and abide by the
19 rules adopted for that Program.
- 20 (4) Surrender his driver's license to the clerk of superior court, and not
21 operate a motor vehicle for a period specified by the court.
- 22 (5) Compensate the Department of Environment, Health, and Natural
23 Resources or the North Carolina Wildlife Resources Commission, as
24 the case may be, for the replacement costs of any marine and estuarine
25 resources or any wildlife resources which were taken, injured,
26 removed, harmfully altered, damaged or destroyed as a result of a
27 criminal offense of which the defendant was convicted. If any
28 investigation is required by officers or agents of the Department of
29 Environment, Health, and Natural Resources or the Wildlife Resources
30 Commission in determining the extent of the destruction of resources
31 involved, the court may include compensation of the agency for
32 investigative costs as a condition of probation. This subdivision does
33 not apply in any case governed by G.S. 143-215.3(a)(7).
- 34 (6) Perform community or reparation service and pay any fee required by
35 law or ordered by the court for participation in the community or
36 reparation service program.
- 37 (7) Submit at reasonable times to warrantless searches by a probation
38 officer of his person and of his vehicle and premises while he is
39 present, for purposes specified by the court and reasonably related to
40 his probation supervision, but the probationer may not be required to
41 submit to any other search that would otherwise be unlawful.
42 Whenever the warrantless search consists of testing for the presence of
43 illegal drugs, the probationer may also be required to reimburse the

1 Department of Correction for the actual cost of drug screening and
2 drug testing, if the results are positive.

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

10 (8a) Purchase the least expensive annual statewide license or combination
11 of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3,
12 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to
13 engage lawfully in the specific activity or activities in which the
14 defendant was engaged and which constitute the basis of the offense or
15 offenses of which he was convicted.

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

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

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

23 **"§ 15A-1343.1. Criteria for selection and sentencing to IMPACT.**

24 The criteria for selecting and sentencing youthful offenders to the Intensive
25 Motivational Program of Alternative Correctional Treatment as provided under G.S.
26 15A-1343(b1)(2a) shall be as follows:

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

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

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

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

37 Sec. 17.1. Chapter 15A of the General Statutes is amended to add a new
38 section to read:

39 **"§ 15A-1343.2. Special probation rules for persons sentenced under Article 81B.**

40 (a) Applicability. – This section applies only to persons sentenced under Article
41 81B of this Chapter.

42 (b) Purposes of Probation for Community and Intermediate Punishments. – The
43 Department of Correction shall develop a plan to handle offenders sentenced to
44 community and intermediate punishments. The probation program designed to handle

1 these offenders shall have the following principal purposes: to hold offenders
2 accountable for making restitution, to ensure compliance with the court's judgment, to
3 effectively rehabilitate offenders by directing them to specialized treatment or education
4 programs, and to protect the public safety.

5 (c) Probation Caseload Goals. – It is the goal of the General Assembly that,
6 subject to the availability of funds, caseloads for probation officers supervising persons
7 sentenced to community punishment should not exceed an average of 90 offenders per
8 officer, and caseloads for offenders sentenced to intermediate punishments should not
9 exceed an average of 60 offenders per officer by July 1, 1998.

10 (d) Lengths of Probation Terms Under Structured Sentencing. – Unless the court
11 makes specific findings that longer or shorter periods of probation are necessary, the
12 length of the term of probation for offenders sentenced under Article 81B shall be as
13 follows:

- 14 (1) For misdemeanants sentenced to community punishment, not less that
15 six nor more than 18 months;
- 16 (2) For misdemeanants sentenced to intermediate punishment, not less
17 than 12 nor more than 24 months;
- 18 (3) For felons sentenced to community punishment, not less than 12 nor
19 more than 30 months; and
- 20 (4) For felons sentenced to intermediate punishment, not less than 18 nor
21 more than 36 months.

22 The court may with the consent of the offender extend the original term of the probation
23 if necessary to complete a program of restitution or to complete medical or psychiatric
24 treatment ordered as a condition of probation. This extension may be for no more than
25 three years, and may only be ordered in the last six months of the original probation
26 term.

27 (e) Delegation to Probation Officer in Community Punishment. – The court may
28 delegate to the Division of Adult Probation and Parole in the Department of Correction
29 the authority to require an offender sentenced to community punishment to:

- 30 (1) Perform up to 20 hours of community service, and pay the fee
31 prescribed by law for this supervision;
- 32 (2) Report to the offender's probation officer on a frequency to be
33 determined by the officer; or
- 34 (3) Submit to substance abuse monitoring or treatment.

35 If the Division imposes any of the above requirements, then it may subsequently reduce
36 or remove those same requirements.

37 If the probation officer exercises authority delegated by the court pursuant to this
38 subsection, the offender may file a motion with the court to review the action taken by
39 the probation officer. The offender shall be given notice of the right to seek such a
40 court review. The Division may exercise any authority delegated to it under this
41 subsection only if it first determines that the offender has failed to comply with one or
42 more of the conditions of probation imposed by the court.

1 (f) Delegation to Probation Officer in Intermediate Punishments. – The court
2 may delegate to the Division of Adult Probation and Parole in the Department of
3 Correction the authority to require an offender sentenced to intermediate punishment to:

4 (1) Perform up to 50 hours of community service, and pay the fee
5 prescribed by law for this supervision;

6 (2) Submit to electronic monitoring;

7 (3) Submit to substance abuse monitoring or treatment; or

8 (4) Participate in an educational or vocational skills development program.

9 If the Division imposes any of the above requirements, then it may subsequently reduce
10 or remove those same requirements.

11 If the probation officer exercises authority delegated to him or her by the court
12 pursuant to this subsection, the offender may file a motion with the court to review the
13 action taken by the probation officer. The offender shall be given notice of the right to
14 seek such a court review. The Division may exercise any authority delegated to it under
15 this subsection only if it first determines that the offender has failed to comply with one
16 or more of the conditions of probation imposed by the court.

17 (g) Contempt for Probation Violation on Intermediate Punishments. – An
18 offender sentenced to an intermediate punishment who willfully fails to comply with a
19 condition of probation commits an act of criminal contempt as specified in G.S. 5A-
20 11(a)(10) for doing so, and may be punished as provided in Article 1 of Chapter 5A of
21 the General Statutes. Service of a sentence for contempt under this subsection does not
22 terminate the offender's probation. Notwithstanding the provisions of G.S. 5A-12(a), an
23 offender punished under this subsection may be imprisoned for up to 30 days, but no
24 fine or any other punishment shall be imposed for contempt under this subsection. A
25 person held in criminal contempt under this section shall not for the same conduct have
26 the person's probation revoked under this Article. A person imprisoned under this
27 subsection for contempt shall be given day-for-day credit on any sentence of
28 imprisonment for the underlying offense, if the offender's probation is subsequently
29 revoked. If the offender serves a sentence for contempt in a local confinement facility,
30 the Department of Correction shall pay for the confinement at the standard rate set by
31 the General Assembly pursuant to G.S. 148-32.1(a), regardless of whether the offender
32 would be eligible under the terms of that subsection.

33 (h) Definitions. – For purposes of this section, the definitions in G.S. 15A-
34 1340.11 apply."

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

36 **"§ 15A-1344. Response to violations; alteration and revocation.**

37 (a) Authority to Alter or Revoke. – Except as provided in subsection (b),
38 probation may be reduced, terminated, continued, extended, modified, or revoked by
39 any judge entitled to sit in the court which imposed probation and who is resident or
40 presiding in the district court district as defined in G.S. 7A-133 or superior court district
41 or set of districts as defined in G.S. 7A-41.1, as the case may be, where the sentence of
42 probation was imposed, where the probationer violates probation, or where the
43 probationer resides. Upon a finding that an offender sentenced to community
44 punishment under Article 81B has violated one or more conditions of probation, the

1 court's authority to modify the probation judgment includes the authority to require the
2 offender to comply with conditions of probation that would otherwise make the
3 sentence an intermediate punishment. The district attorney of the prosecutorial district
4 as defined in G.S. 7A-60 in which probation was imposed must be given reasonable
5 notice of any hearing to affect probation substantially.

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

12 (c) Procedure on Altering or Revoking Probation; Returning Probationer to
13 District Where Sentenced. – When a judge reduces, terminates, extends, modifies, or
14 revokes probation outside the county where the judgment was entered, the clerk must
15 send a copy of the order and any other records to the court where probation was
16 originally imposed. A court on its own motion may return the probationer to the district
17 court district as defined in G.S. 7A-133 or superior court district or set of districts as
18 defined in G.S. 7A-41.1, as the case may be, where probation was imposed or where the
19 probationer resides for reduction, termination, continuation, extension, modification, or
20 revocation of probation. In cases where the probation is revoked in a county other than
21 the county of original conviction the clerk in that county must issue a commitment order
22 and must file the order revoking probation and the commitment order, which will
23 constitute sufficient permanent record of the proceeding in that court, and must send a
24 certified copy of the order revoking probation, the commitment order, and all other
25 records pertaining thereto to the county of original conviction to be filed with the
26 original records. The clerk in the county other than the county of original conviction
27 must issue the formal commitment to the North Carolina Department of Correction.

28 (d) Extension and Modification; Response to Violations. – At any time prior
29 to the expiration or termination of the probation period, the court may after notice and
30 hearing and for good cause shown extend the period of probation up to the maximum
31 allowed under G.S. 15A-1342(a) and may modify the conditions of probation. The
32 probation period shall be tolled if the probationer shall have pending against him
33 criminal charges in any court of competent jurisdiction, which, upon conviction, could
34 result in revocation proceedings against him for violation of the terms of this probation.
35 The hearing may be held in the absence of the defendant, if he fails to appear for the
36 hearing after a reasonable effort to notify him. If a convicted defendant violates a
37 condition of probation at any time prior to the expiration or termination of the period of
38 probation, the court, in accordance with the provisions of G.S. 15A-1345, may continue
39 him on probation, with or without modifying the conditions, may place the defendant on
40 special probation as provided in subsection (e), or, if continuation, modification, or
41 special probation is not appropriate, may revoke the probation and activate the
42 suspended sentence imposed at the time of initial sentencing, if any, or may order that
43 charges as to which prosecution has been deferred be brought to trial; provided that
44 probation may not be revoked solely for conviction of a ~~misdemeanor unless it is~~

1 ~~punishable by imprisonment for more than 30 days.~~ Class 3 misdemeanor. The court,
2 before activating a sentence to imprisonment established when the defendant was placed
3 on probation, may reduce the ~~sentence.~~ sentence, but the reduction shall be consistent
4 with subsection (d1) of this section. A sentence activated upon revocation of probation
5 commences on the day probation is revoked and runs concurrently with any other period
6 of probation, parole, or imprisonment to which the defendant is subject during that
7 period unless the revoking judge specifies that it is to run consecutively with the other
8 period.

9 (d1) Reduction of Initial Sentence. – If the court elects to reduce the sentence of
10 imprisonment for a felony, it shall not deviate from the range of minimum durations
11 established in Article 81B of this Chapter for the class of offense and prior record level
12 used in determining the initial sentence. If the presumptive range is used for the initial
13 suspended sentence, the reduced sentence shall be within the presumptive range. If the
14 mitigated range is used for the initial suspended sentence, the reduced sentence shall be
15 within the mitigated range. If the aggravated range is used for the initial suspended
16 sentence, the reduced sentence shall be within the aggravated range. If the court elects
17 to reduce the sentence for a misdemeanor, it shall not deviate from the range of
18 durations established in Article 81B for the class of offense and prior conviction level
19 used in determining the initial sentence.

20 (e) Special Probation in Response to Violation. – When a defendant has violated
21 a condition of probation, the court may modify his probation to place him on special
22 probation as provided in this subsection. In placing him on special probation, the court
23 may continue or modify the conditions of his probation and in addition require that he
24 submit to a period or periods of imprisonment, either continuous or noncontinuous, at
25 whatever time or intervals within the period of probation the court determines. In
26 addition to any other conditions of probation which the court may impose, the court
27 shall impose, when imposing a period or periods of imprisonment as a condition of
28 special probation, the condition that the defendant obey the Rules and Regulations of
29 the Department of Correction governing conduct of inmates, and this condition shall
30 apply to the defendant whether or not the court imposes it as a part of the written order.
31 If imprisonment is for continuous periods, the confinement may be in either the custody
32 of the Department of Correction or a local confinement facility. Noncontinuous periods
33 of imprisonment under special probation may only be served in a designated local
34 confinement or treatment facility. ~~Except for probationary sentences for impaired~~
35 driving under G.S. 20-138.1, the ~~The~~ total of all periods of confinement imposed as an
36 incident of special probation, but not including an activated suspended sentence, may
37 not exceed six months or one fourth the maximum ~~penalty allowed by law~~ sentence of
38 imprisonment imposed for the offense, whichever is less. ~~For probationary sentences~~
39 for impaired driving under G.S. 20-138.1, the total of all periods of confinement
40 imposed as an incident of special probation, but not including an activated suspended
41 sentence, shall not exceed one-fourth the maximum penalty allowed by law. ~~No~~
42 confinement other than an activated suspended sentence may be required beyond the
43 period of probation or beyond two years of the time the special probation is imposed,
44 whichever comes first.

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

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

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

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

9 **"§ 15A-1351. Sentence of imprisonment; incidents; special probation.**

10 (a) The judge may sentence to special probation a defendant convicted of an
11 ~~offense for which the maximum penalty does not exceed 10 years to special probation~~
12 criminal offense other than impaired driving under G.S. 20-138.1, if based on the
13 defendant's prior record or conviction level as found pursuant to Article 81B of this
14 Chapter, an intermediate punishment is authorized for the class of offense of which the
15 defendant has been convicted. A defendant convicted of impaired driving under G.S.
16 20-138.1 may also be sentenced to special probation. Under a sentence of special
17 probation, the court may suspend the term of imprisonment and place the defendant on
18 probation as provided in Article 82, Probation, and in addition require that the defendant
19 submit to a period or periods of imprisonment in the custody of the Department of
20 Correction or a designated local confinement or treatment facility at whatever time or
21 intervals within the period of probation, consecutive or nonconsecutive, the court
22 determines. In addition to any other conditions of probation which the court may
23 impose, the court shall impose, when imposing a period or periods of imprisonment as a
24 condition of special probation, the condition that the defendant obey the Rules and
25 Regulations of the Department of Correction governing conduct of inmates, and this
26 condition shall apply to the defendant whether or not the court imposes it as a part of the
27 written order. If imprisonment is for continuous periods, the confinement may be in the
28 custody of either the Department of Correction or a local confinement facility.
29 Noncontinuous periods of imprisonment under special probation may only be served in
30 a designated local confinement or treatment facility. Except for probationary sentences
31 of impaired driving under G.S. 20-138.1, the ~~The~~ total of all periods of confinement
32 imposed as an incident of special probation, but not including an activated suspended
33 sentence, may not exceed six months or one fourth the maximum ~~penalty allowed by~~
34 law ~~sentence of imprisonment imposed~~ for the offense, whichever is less, and no
35 confinement other than an activated suspended sentence may be required beyond two
36 years of conviction. For probationary sentences for impaired driving under G.S. 20-
37 138.1, the total of all periods of confinement imposed as an incident of special
38 probation, but not including an activated suspended sentence, shall not exceed one-
39 fourth the maximum penalty allowed by law. In imposing a sentence of special
40 probation, the judge may credit any time spent committed or confined, as a result of the
41 charge, to either the suspended sentence or to the imprisonment required for special
42 probation. The period of probation, including the period of imprisonment required for
43 special probation, may not exceed five years. The court may revoke, modify, or
44 terminate special probation as otherwise provided for probationary sentences.

1 (b) ~~Sentencing of a person convicted of a felony that occurred on or after the~~
2 ~~effective date of Article 81A of this Chapter is subject to that Article; a minimum term~~
3 ~~of imprisonment shall not be imposed on such a person. Sentencing of a person~~
4 ~~convicted of a felony or of a misdemeanor other than impaired driving under G.S. 20-~~
5 ~~138.1 that occurred on or after the effective date of Article 81B is subject to that Article.~~
6 ~~With regard to convicted persons not subject to Article 81A, For persons convicted of~~
7 ~~impaired driving under G.S. 20-138.1, a sentence to imprisonment must impose a~~
8 ~~maximum term and may impose a minimum term. The impaired driving judgment may~~
9 ~~state the minimum term or may state that a term constitutes both the minimum and~~
10 ~~maximum terms. If the impaired driving judgment states no minimum term, the~~
11 ~~defendant becomes eligible for parole in accordance with G.S. 15A-1371(a).~~

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

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

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

22 (f) Work Release. — When sentencing a person convicted of a felony, the sentencing
23 court may recommend that the sentenced offender be granted work release as authorized
24 in G.S. 148-33.1. When sentencing a person convicted of a misdemeanor, the
25 sentencing court may recommend or, with the consent of the person sentenced, order
26 that the sentenced offender be granted work release as authorized in G.S. 148-33.1.

27 (g) Credit. — Credit towards a sentence to imprisonment is as provided in Article
28 19A of Chapter 15 of the General Statutes.

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

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

33 "(c) Earned Time; Credit for Good Behavior for Impaired Drivers. — The
34 ~~Department of Correction and jailers, as defined by G.S. 15A-1340.2, must give credit~~
35 ~~for good behavior toward service of a prison or jail term imposed for a felony that~~
36 ~~occurred on or after the effective date of Article 81A, as required by G.S. 15A-1340.7.~~
37 ~~The provisions of this subsection do not apply to persons convicted of Class A or Class~~
38 ~~B felonies nor to persons sentenced to a term of special probation under G.S. 15A-~~
39 ~~1344(e) or G.S. 15A-1351(a). The Department of Correction and jailers may give time~~
40 ~~credit toward service of other prison or jail terms imposed for a felony or misdemeanor,~~
41 ~~according to regulations issued by the Secretary of Correction as provided by G.S. 148-~~
42 ~~13. Persons convicted of felonies or misdemeanors under Article 81B of this Chapter~~
43 ~~may, consistent with rules of the Department of Correction, earn credit which may be~~
44 ~~used to reduce their maximum terms of imprisonment as provided in G.S. 15A-~~

1 1340.13(d) for felony sentences and in G.S. 15A-1340.20(d) for misdemeanor
2 sentences.

3 For sentences of imprisonment imposed for convictions of impaired driving under
4 G.S. 20-138.1, the Department of Correction may give credit toward service of the
5 maximum term and any minimum term of imprisonment and toward eligibility for
6 parole for allowances of time as provided in rules and regulations made under G.S. 148-
7 11 and 148-13."

8 Sec. 20.1. Chapter 15A is amended by adding a new Article to read:

9 **"ARTICLE 84A.**

10 **"POST-RELEASE SUPERVISION.**

11 **"§ 15A-1370.1. Definitions and administration.**

12 (a) The following words have the listed meaning in this Article:

13 (1) Post-release supervision or supervision. – The time for which a
14 sentenced prisoner is released from prison before the termination of his
15 maximum prison term, controlled by the rules and conditions of this
16 Article. Purposes of post-release supervision include all or any of the
17 following: to monitor and control the prisoner in the community, to
18 assist the prisoner in reintegrating into society, to collect restitution
19 and other court indebtedness from the prisoner, and to continue the
20 prisoner's treatment or education.

21 (2) Supervisee. – A person released from incarceration and in the custody
22 of the Department of Correction and Post-Release Supervision and
23 Parole Commission on post-release supervision.

24 (3) Commission. – The Post-Release Supervision and Parole Commission,
25 whose general authority is described in G.S. 143B-266.

26 (4) Minimum imposed term. – The minimum term of imprisonment
27 imposed on an individual prisoner by a court judgment, as described in
28 G.S. 15A-1340.13(c). When a prisoner is serving consecutive
29 imprisonment terms, the minimum imposed term, for purposes of this
30 Article, is the sum of all minimum terms imposed in the court
31 judgment.

32 (5) Maximum imposed term. – The maximum term of imprisonment
33 imposed on an individual prisoner by a court judgment, as described in
34 G.S. 15A-1340.13(c). When a prisoner is serving consecutive prison
35 terms, the maximum imposed term, for purposes of this Article, is the
36 sum of all maximum terms imposed in the court judgment.

37 (b) Administration. – The Post-Release Supervision and Parole Commission, as
38 authorized in Chapter 143, shall administer post-release supervision as provided in this
39 Article.

40 **"§ 15A-1370.2. Applicability of Article 84A.**

41 This Article applies to all felons in Class B through Class E sentenced to an active
42 punishment as defined in G.S. 15A-1340.11. Prisoners subject to Articles 85 and 85A
43 are excluded from this Article's coverage.

44 **"§ 15A-1370.3. Post-release supervision eligibility and procedure.**

1 (a) A prisoner to whom this Article applies shall be released from prison for
2 post-release supervision on the date equivalent to his maximum imposed prison term
3 less nine months, less any earned time awarded by the Department of Correction or the
4 custodian of a local confinement facility under G.S. 15A-1340(d). If a prisoner has not
5 been awarded any earned time, the prisoner shall be released for post-release
6 supervision on the date equivalent to his maximum prison term less nine months.

7 (b) A prisoner shall not refuse post-release supervision.

8 (c) A supervisee's period of post-release supervision shall be for a period of six
9 months. The conditions of post-release supervision are as authorized in G.S. 15A-
10 1370.5.

11 (d) A supervisee's period of post-release supervision may be reduced while the
12 supervisee is under supervision by earned time awarded by the Department of
13 Correction, pursuant to rules adopted in accordance with law. A supervisee is eligible
14 to receive earned time credit toward the period of supervision for compliance with
15 reintegrative conditions described in G.S. 15A-1370.5.

16 (e) The Commission shall choose the level of supervision for supervisees. It may
17 place a supervisee on any available level of supervision, including electronic
18 monitoring, intensive supervision, or regular supervision.

19 (f) When a supervisee completes the period of post-release supervision, the
20 sentence or sentences from which the supervisee was placed on post-release supervision
21 are terminated.

22 **"§ 15A-1370.4. Incidents of post-release supervision.**

23 (a) Conditionality. – Post-release supervision is conditional and subject to
24 revocation.

25 (b) Modification. – The Commission may for good cause shown modify the
26 conditions of post-release supervision at any time before the termination of the
27 supervision period.

28 (c) Effect of Violation. – If the supervisee violates a condition, described in G.S.
29 15A-1370.5, at any time before the termination of the supervision period, the
30 Commission may continue the supervisee on the existing supervision, with or without
31 modifying the conditions, or if continuation or modification is not appropriate, may
32 revoke post-release supervision as provided in G.S. 15A-1370.7 and reimprison the
33 supervisee for a term consistent with the following requirements:

34 (1) The supervisee will be returned to prison up to the time remaining on
35 his maximum imposed term.

36 (2) The supervisee shall not receive any credit for days on post-release
37 supervision against the maximum term of imprisonment imposed by
38 the court under G.S. 15A-1340.13.

39 (3) Pursuant to Article 19A of Chapter 15, the Department of Correction
40 shall award a prisoner credit against any term of reimprisonment for all
41 time spent in custody as a result of revocation proceedings under G.S.
42 15A-1370.7.

1 (4) The prisoner is eligible to receive earned time credit against the
2 maximum prison term as provided in G.S. 15A-1340(d) for time
3 served in prison after the revocation.

4 (d) Re-Release After Revocation of Post-Release Supervision. – A prisoner who
5 has been reimprisoned prior to completing a post-release supervision period may again
6 be released on post-release supervision by the Commission subject to the provisions
7 which govern initial release.

8 (e) Timing of Revocation. – The Commission may revoke post-release
9 supervision for violation of a condition during the period of supervision. The
10 Commission may also revoke following a period of supervision if:

11 (1) Before the expiration of the period of post-release supervision, the
12 Commission has recorded its intent to conduct a revocation hearing;
13 and

14 (2) The Commission finds that every reasonable effort has been made to
15 notify the supervisee and conduct the hearing earlier. **Prima facie**
16 evidence of reasonable effort to notify is the issuance of a temporary
17 or conditional revocation order, as provided in G.S. 15A-1376, that
18 goes unserved.

19 "**§ 15A-1370.5. Conditions of post-release supervision.**

20 (a) In General. – Conditions of post-release supervision may be reintegrative in
21 nature or designed to control the supervisee's behavior and to enforce compliance with
22 law or judicial order. A supervisee may have his supervision period revoked for any
23 violation of a controlling condition or for repeated violation of a reintegrative condition.
24 Compliance with reintegrative conditions may entitle a supervisee to earned time credits
25 as described in G.S. 15A-1370.3(d).

26 (b) Required Condition. – The Commission shall provide as an express condition
27 of every release that the supervisee not commit another crime during the period for
28 which the supervisee remains subject to revocation. A supervisee's failure to comply
29 with this controlling condition is a supervision violation for which the supervisee may
30 face revocation as provided in G.S. 15A-1370.4.

31 (c) Discretionary Conditions. – The Commission may in its discretion impose
32 conditions on a supervisee it believes reasonably necessary to ensure that the supervisee
33 will lead a law-abiding life or to assist the supervisee to do so.

34 (d) Reintegrative Conditions. – Appropriate reintegrative conditions, for which a
35 supervisee may receive earned time credits against the length of the supervision period,
36 and repeated violation that may result in revocation of post-release supervision, are:

37 (1) Work faithfully at suitable employment or faithfully pursue a course of
38 study or vocational training that will equip the supervisee for suitable
39 employment.

40 (2) Undergo available medical or psychiatric treatment and remain in a
41 specified institution if required for that purpose.

42 (3) Attend or reside in a facility providing rehabilitation, instruction,
43 recreation, or residence for persons on post-release supervision.

- 1 (4) Support the supervisee's dependents and meet other family
2 responsibilities.
- 3 (5) In the case of a supervisee who attended a basic skills program during
4 incarceration, continue attending a basic skills program in pursuit of a
5 General Education Development Degree or adult high school diploma.
- 6 (6) Satisfy other conditions reasonably related to reintegration into
7 society.
- 8 (e) Controlling Conditions. – Appropriate controlling conditions, violation of
9 which may result in revocation of post-release supervision, are:
- 10 (1) Not use, possess, or control any illegal drug or controlled substance
11 unless it has been prescribed for the supervisee by a licensed physician
12 and is in the original container with the prescription number affixed on
13 it; not knowingly associate with any known or previously convicted
14 users, possessors, or sellers of any such illegal drugs or controlled
15 substances; and not knowingly be present at or frequent any place
16 where such illegal drugs or controlled substances are sold, kept, or
17 used.
- 18 (2) Comply with a court order to pay the costs of reintegrative treatment
19 for a minor and a minor's parents or custodians where the offense
20 involved evidence of physical, mental, or sexual abuse of a minor.
- 21 (3) Comply with a court order to pay court costs and costs for appointed
22 counsel or public defender in the case for which the supervisee was
23 convicted.
- 24 (4) Not possess a firearm, destructive device, or other dangerous weapon
25 unless granted written permission by the Commission or a post-release
26 supervision officer.
- 27 (5) Report to a post-release supervision officer at reasonable times and in
28 a reasonable manner, as directed by the Commission or a post-release
29 supervision officer.
- 30 (6) Permit a post-release supervision officer to visit at reasonable times at
31 the supervisee's home or elsewhere.
- 32 (7) Remain within the geographic limits fixed by the Commission unless
33 granted written permission to leave by the Commission or the post-
34 release supervision officer.
- 35 (8) Answer all reasonable inquiries by the post-release supervision officer
36 and obtain prior approval from the post-release supervision officer for
37 any change in address or employment.
- 38 (9) Promptly notify the post-release supervision officer of any change in
39 address or employment.
- 40 (10) Submit at reasonable times to searches of the supervisee's person by a
41 post-release supervision officer for purposes reasonably related to the
42 post-release supervision. The Commission shall not require as a
43 condition of post-release supervision that the supervisee submit to any
44 other searches that would otherwise be unlawful. Whenever the search

1 consists of testing for the presence of illegal drugs, the supervisee may
2 also be required to reimburse the Department of Correction for the
3 actual cost of drug testing and drug screening, if the results are
4 positive.

5 (11) Make restitution or reparation to an aggrieved party as provided in
6 G.S. 148-57.1.

7 (12) Comply with an order from a court of competent jurisdiction regarding
8 the payment of an obligation of the supervisee in connection with any
9 judgment rendered by the court.

10 (f) Required Supervision Fee. – The Commission shall require as a condition of
11 post-release supervision that the supervisee pay a supervision fee of twenty dollars
12 (\$20.00) per month. The Commission may exempt a supervisee from this condition
13 only if it finds that requiring payment of the fee is an undue economic burden. The fee
14 shall be paid to the clerk of superior court of the county in which the supervisee was
15 convicted. The clerk shall transmit any money collected pursuant to this subsection to
16 the State to be deposited in the State's General Fund. In no event shall a supervisee be
17 required to pay more than one supervision fee per month.

18 **"§ 15A-1370.6. Commencement of post-release supervision; multiple sentences.**

19 A period of post-release supervision begins on the day the prisoner is released from
20 imprisonment. Periods of post-release supervision run concurrently with any federal or
21 State prison, jail, probation, or parole terms to which the prisoner is subject during the
22 period, only if the jurisdiction which sentenced the prisoner to prison, jail, probation, or
23 parole permits concurrent crediting of supervision time.

24 **"§ 15A-1370.7. Arrest and hearing on post-release supervision violation.**

25 (a) Arrest for Violation of Post-Release Supervision. – A supervisee is subject to
26 arrest by a law enforcement officer or a post-release supervision officer for violation of
27 conditions of post-release supervision only upon issuance of an order of temporary or
28 conditional revocation of post-release supervision by the Commission. However, a
29 post-release supervision revocation hearing under subsection (e) of this section may be
30 held without first arresting the supervisee.

31 (b) When and Where Preliminary Hearing on Post-Release Supervision Violation
32 Required. – Unless the hearing required by subsection (e) of this section is first held or
33 the supervisee waives the hearing or a continuance is requested by the supervisee, a
34 preliminary hearing on supervision violation shall be held reasonably near the place of
35 the alleged violation or arrest and within seven working days of the arrest of a
36 supervisee to determine whether there is probable cause to believe that the supervisee
37 violated a condition of post-release supervision. Otherwise, the supervisee shall be
38 released seven working days after arrest to continue on supervision pending a hearing.
39 If the supervisee is not within the State, the preliminary hearing is as prescribed by G.S.
40 148-65.1A.

41 (c) Officers to Conduct Preliminary Hearing. – The preliminary hearing on post-
42 release supervision violation shall be conducted by a judicial official, or by a hearing
43 officer designated by the Commission. A person employed by the Department of
44 Correction shall not serve as a hearing officer at a hearing provided by this section

1 unless that person is a member of the Commission, or is employed solely as a hearing
2 officer.

3 (d) Procedure for Preliminary Hearing. – The Department of Correction shall
4 give the supervisee notice of the preliminary hearing and its purpose, including a
5 statement of the violations alleged. At the hearing, the supervisee may appear and
6 speak in the supervisee's own behalf, may present relevant information, and may, on
7 request, personally question witnesses and adverse informants, unless the hearing
8 officer finds good cause for not allowing confrontation. If the person holding the
9 hearing determines there is probable cause to believe the supervisee violated conditions
10 of supervision, the hearing officer shall summarize the reasons for the determination
11 and the evidence relied on. Formal rules of evidence do not apply at the hearing. If
12 probable cause is found, the supervisee may be held in the custody of the Department of
13 Correction to serve the appropriate term of imprisonment, subject to the outcome of a
14 revocation hearing under subsection (e) of this section.

15 (e) Revocation Hearing. – Before finally revoking post-release supervision, the
16 Commission shall, unless the supervisee waived the hearing or the time limit, provide a
17 hearing within 45 days of the supervisee's reconfinement to determine whether to
18 revoke supervision finally. The Commission shall adopt rules governing the hearing
19 and shall file and publish them as provided in Article 5 of Chapter 150B of the General
20 Statutes."

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

22 **"§ 15A-1370.1. Applicability of Article 85.**

23 This Article is applicable to all prisoners serving sentences of imprisonment for
24 convictions of impaired driving under G.S. 20-138.1 and prisoners serving sentences of
25 life imprisonment. ~~sentenced prisoners, including Class A and Class B felons, and Class~~
26 ~~C felons who receive a sentence of life imprisonment, who are not subject to Article~~
27 ~~85A of this Chapter."~~

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

29 **"§ 15A-1371. Parole eligibility, consideration, and refusal.**

30 (a) Eligibility. – Unless his sentence includes a minimum sentence, a prisoner
31 serving a term of imprisonment for a conviction of impaired driving under G.S. 20-
32 138.1 other than one included in a sentence of special probation imposed under
33 authority of this Subchapter is eligible for release on parole at any time. A prisoner
34 whose sentence includes a minimum term of imprisonment imposed under authority of
35 this Subchapter is eligible for release on parole only upon completion of the service of
36 that minimum term or one fifth of the maximum penalty allowed by law for the offense
37 for which the prisoner is sentenced, whichever is less, less any credit allowed under
38 G.S. 15A-1355(c) and Article 19A of Chapter 15 of the General Statutes. ~~Under this~~
39 ~~section, when the maximum allowed by law for the offense is life imprisonment, one~~
40 ~~fifth of the maximum is calculated as 20 years.~~

41 (a1) A prisoner serving a term of life imprisonment ~~with no minimum term~~ is
42 eligible for parole after serving ~~20–25~~ years. This subsection applies to offenses
43 committed on and after ~~July 1, 1984~~ January 1, 1995.

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

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

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

20 ~~(3) Whenever the Parole Commission—Post-Release Supervision and~~
21 ~~Parole Commission will be considering for parole a prisoner serving a~~
22 ~~sentence of life imprisonment convicted of first or second degree~~
23 ~~murder, first degree rape, or first degree sexual offense, the~~
24 ~~Commission must notify, at least 30 days in advance of considering~~
25 ~~the parole, by first class mail at the last known address:~~

26 a. The prisoner;

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

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

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

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

36 ~~The Parole Commission—Post-Release Supervision and Parole~~
37 ~~Commission must consider any information provided by any such~~
38 ~~parties before consideration of parole. The Commission must also~~
39 ~~give the district attorney, the head of the law enforcement agency who~~
40 ~~has requested in writing to be notified, the victim, or any member of~~
41 ~~the victim's immediate family who has requested to be notified, written~~
42 ~~notice of its decision within 10 days of that decision.~~

43 ~~(c) Statement of Reasons for Release before Minimum.—If parole is granted~~
44 ~~before the expiration of a minimum period of imprisonment imposed by the court under~~

1 ~~G.S. 15A-1351(b) or recommended by the court under G.S. 15A-1351(d), the~~
2 ~~Commission must state in writing the reasons why the imposed or recommended~~
3 ~~minimum was not followed.~~

4 (d) ~~Criteria.~~ – The Parole Commission-Post-Release Supervision and Parole
5 Commission may refuse to release on parole a prisoner it is considering for parole if it
6 believes:

- 7 (1) There is a substantial risk that he will not conform to reasonable
8 conditions of parole; or
- 9 (2) His release at that time would unduly depreciate the seriousness of his
10 crime or promote disrespect for law; or
- 11 (3) His continued correctional treatment, medical care, or vocational or
12 other training in the institution will substantially enhance his capacity
13 to lead a law-abiding life if he is released at a later date; or
- 14 (4) There is a substantial risk that he would engage in further criminal
15 conduct.

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

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

- 22 (1) ~~The person is to serve a period of probation following his~~
23 ~~imprisonment;~~
- 24 (2) ~~The person has been reimprisoned following parole as provided in~~
25 ~~G.S. 15A-1373(e); or~~
- 26 (3) ~~The Parole Commission finds facts demonstrating a strong likelihood~~
27 ~~that the health or safety of the person or public would be endangered~~
28 ~~by his release at that time.~~

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

- 34 (1) There is a substantial risk that he will not conform to reasonable
35 conditions of parole; or
- 36 (2) His release at that time would unduly depreciate the seriousness of his
37 crime or promote disrespect for law; or
- 38 (3) His continued correctional treatment, medical care, or vocational or
39 other training in the institution will substantially enhance his capacity
40 to lead a law-abiding life if he is released at a later date; or
- 41 (4) There is a substantial risk that he would engage in further criminal
42 conduct.

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

1 unless otherwise specified by the ~~Parole Commission~~ Post-Release Supervision and
2 Parole Commission, are those authorized in G.S. 15A-1374(b)(4) through (10).

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

9 (h) Community Service Parole. – Notwithstanding the provisions of any other
10 subsection herein, ~~certain prisoners specified herein serving sentences for impaired~~
11 driving shall be eligible for community service parole, in the discretion of the ~~Parole~~
12 Commission. ~~Post-Release Supervision and Parole Commission~~.

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

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

31 Community service parole eligibility shall be available to a prisoner:

- 32 (1) Who is serving an active sentence the term of which exceeds six
33 months; and
- 34 (2) Who, in the opinion of the ~~Parole Commission~~, Post-Release
35 Supervision and Parole Commission, is unlikely to engage in further
36 criminal conduct; and
- 37 (3) Who agrees to complete service of his sentence as herein specified;
38 and
- 39 (4) Who has served one-half of his minimum sentence ~~(if he was~~
40 ~~sentenced prior to July 1, 1981), or one-fourth of a sentence imposed~~
41 ~~under G.S. 15A-1340.4.~~

42 ~~No prisoner convicted under Article 7A of Chapter 14 of a sex offense, under G.S.~~
43 ~~14-39, 14-41, or 14-43.3, or under G.S. 90-95(h) of a drug trafficking offense~~
44 ~~shall be eligible for community service parole.~~

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

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

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

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

20 "**§ 15A-1372. Length and effect of parole term.**

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

23 (1) One year, ~~if the remainder of the maximum term of imprisonment is~~
 24 ~~one year or more; or~~ for a conviction for impaired driving under G.S.
 25 20-138.1; or

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

28 (2) Three years for a sentence of life imprisonment.

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

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

32 (2) ~~Five years when the maximum prison sentence imposed is greater than~~
 33 ~~20 years; or~~

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

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

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

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

1 ~~finds that such action will not be incompatible with the public interest, the Commission~~
2 ~~is also authorized:~~

- 3 (1) ~~Simultaneously to parole and terminate supervision of a prisoner;~~
- 4 (2) ~~To parole a prisoner on the condition that he be placed under house~~
5 ~~arrest; or~~
- 6 (3) ~~To parole a prisoner but continue to supervise the prisoner for a period~~
7 ~~to be determined by the Commission;~~

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

11 Sec. 24. Article 85A of Chapter 15A of the General Statutes is repealed.

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

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

- 15 (1) The acts charged in the criminal pleading did not at the time they were
16 committed constitute a violation of criminal law.
- 17 (2) The trial court lacked jurisdiction over the person of the defendant or
18 over the subject matter.
- 19 (3) The conviction was obtained in violation of the Constitution of the
20 United States or the Constitution of North Carolina.
- 21 (4) The defendant was convicted or sentenced under a statute that was in
22 violation of the Constitution of the United States or the Constitution of
23 North Carolina.
- 24 (5) The conduct for which the defendant was prosecuted was protected by
25 the Constitution of the United States or the Constitution of North
26 Carolina.
- 27 (6) Evidence is available which was unknown or unavailable to the
28 defendant at the time of the trial, which could not with due diligence
29 have been discovered or made available at that time, and which has a
30 direct and material bearing upon the guilt or innocence of the
31 defendant.
- 32 (7) There has been a significant change in law, either substantive or
33 procedural, applied in the proceedings leading to the defendant's
34 conviction or sentence, and retroactive application of the changed legal
35 standard is required.
- 36 (8) The sentence imposed was unauthorized at the time imposed,
37 contained a type of sentence disposition or a term of imprisonment not
38 authorized for the particular class of offense and prior record or
39 conviction level exceeded the maximum authorized by law, was
40 illegally imposed, or is otherwise invalid as a matter of law. However,
41 a motion for appropriate relief on the grounds that the sentence
42 imposed on the defendant is not supported by evidence introduced at
43 the trial and sentencing hearing must be made before the sentencing
44 judge.

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

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

4 "(5b) Violation of Sentencing Structure. – The sentence imposed:

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

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

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

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

16 "**§ 15A-1444. When defendant may appeal; certiorari.**

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

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

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

33 (1) Results from an incorrect finding of the defendant's prior record level
34 under G.S. 15A-1340.14 or the defendant's prior conviction level
35 under G.S. 15A-1340.21;

36 (2) Contains a type of sentence disposition that is not authorized by G.S.
37 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense
38 and prior record or conviction level; or

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

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

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

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

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

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

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

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

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

- 22 a. Results from an incorrect determination of the defendant's prior
23 record level under G.S. 15A-1340.14 or the defendant's prior
24 conviction level under G.S. 15A-1340.21;
25 b. Contains a type of sentence disposition that is not authorized by
26 G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's
27 class of offense and prior record or conviction level; or
28 c. Contains a term of imprisonment that is for a duration not
29 authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the
30 defendant's class of offense and prior record or conviction level.
31 d. Imposes an intermediate punishment pursuant to G.S. 15A-
32 1340.13(g) based on findings of extraordinary mitigating
33 circumstances that are not supported by evidence or are
34 insufficient as a matter of law to support the dispositional
35 deviation."

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

37 "**§ 15A-2002. Capital offenses; jury verdict and sentence.**

38 If the recommendation of the jury is that the defendant be sentenced to death, the
39 judge shall impose a sentence of death in accordance with the provisions of Chapter 15,
40 Article 19 of the General Statutes. If the recommendation of the jury is that the
41 defendant be imprisoned for life in the State's prison, the judge shall impose a sentence
42 of imprisonment for life in the State's prison.

1 The judge shall instruct the jury, in words substantially equivalent to those of this
2 section, that a sentence of life imprisonment means a sentence of life with eligibility for
3 parole consideration after 25 years."

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

5 **"§ 90-95. Violations; penalties.**

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

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

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

11 (3) To possess a controlled substance.

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

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

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

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

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

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

26 (2) A controlled substance classified in Schedule II, III, or IV shall be
27 guilty of a ~~misdemeanor, and shall be sentenced to a term of~~
28 ~~imprisonment of not more than two years or fined not more than two~~
29 ~~thousand dollars (\$2,000), or both in the discretion of the court. Class~~
30 1 misdemeanor. If the controlled substance exceeds four tablets,
31 capsules, or other dosage units or equivalent quantity of
32 hydromorphone or if the quantity of the controlled substance, or
33 combination of the controlled substances, exceeds one hundred tablets,
34 capsules or other dosage units, or equivalent quantity, the violation
35 shall be punishable as a Class I felony. If the controlled substance is
36 phencyclidine, or cocaine and any salt, isomer, salts of isomers,
37 compound, derivative, or preparation thereof, or coca leaves and any
38 salt, isomer, salts of isomers, compound, derivative, or preparation of
39 coca leaves, or any salt, isomer, salts of isomers, compound, derivative
40 or preparation thereof which is chemically equivalent or identical with
41 any of these substances (except decocanized coca leaves or any
42 extraction of coca leaves which does not contain cocaine or ecgonine),
43 the violation shall be punishable as a Class I felony.

1 (3) A controlled substance classified in Schedule V shall be guilty of a
2 ~~misdemeanor and shall be sentenced to a term of imprisonment of not~~
3 ~~more than six months or fined not more than five hundred dollars~~
4 ~~(\$500.00), or both in the discretion of the court; Class 2 misdemeanor;~~

5 (4) A controlled substance classified in Schedule VI shall be guilty of a
6 Class 3 misdemeanor, and shall be sentenced to a term of
7 ~~imprisonment of not more than 30 days or fined not more than one~~
8 ~~hundred dollars (\$100.00), or both, in the discretion of the court, but~~
9 any sentence of imprisonment imposed must be suspended and the
10 judge may not require at the time of sentencing that the defendant
11 serve a period of imprisonment as a special condition of probation. If
12 the quantity of the controlled substance exceeds one-half of an ounce
13 (avoirdupois) of marijuana or one-twentieth of an ounce (avoirdupois)
14 of the extracted resin of marijuana, commonly known as hashish, the
15 violation shall be punishable as a ~~general~~ Class 1 misdemeanor. If the
16 quantity of the controlled substance exceeds one and one-half ounces
17 (avoirdupois) of marijuana or three-twentieths of an ounce
18 (avoirdupois) of the extracted resin of marijuana, commonly known as
19 hashish, or if the controlled substance consists of any quantity of
20 synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from
21 the resin of marijuana, the violation shall be punishable as a Class I
22 felony.

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

- 24 (1) Possess an immediate precursor chemical with intent to manufacture a
25 controlled substance; or
26 (2) Possess or distribute an immediate precursor chemical knowing, or
27 having reasonable cause to believe, that the immediate precursor
28 chemical will be used to manufacture a controlled substance.

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

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

- 34 (1) Anthranilic acid.
35 (2) Benzyl cyanide.
36 (3) Chloroephedrine.
37 (4) Chloropseudoephedrine.
38 (5) D-lysergic acid.
39 (6) Ephedrine.
40 (7) Ergonovine maleate.
41 (8) Ergotamine tartrate.
42 (9) Ethyl Malonate.
43 (10) Ethylamine.
44 (11) Isosafrole.

- 1 (12) Malonic acid.
 2 (13) Methylamine.
 3 (14) N-acetylanthranilic acid.
 4 (15) N-ethylephedrine.
 5 (16) N-ethylepseudoephedrine.
 6 (17) N-methylephedrine.
 7 (18) N-methylpseudoephedrine.
 8 (19) Norpseudoephedrine.
 9 (20) Phenyl-2-propane.
 10 (21) Phenylacetic acid.
 11 (22) Phenylpropanolamine.
 12 (23) Piperidine.
 13 (24) Piperonal.
 14 (25) Propionic anhydride.
 15 (26) Pseudoephedrine.
 16 (27) Pyrrolidine.
 17 (28) Safrole.
 18 (29) Thionylchloride.

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

- 22 (1),(2) Repealed by Session Laws 1979, c. 760, s. 5.
 23 (3) If any person commits ~~an offense~~ a Class 1 misdemeanor under this
 24 Article ~~for which the prescribed punishment includes imprisonment for~~
 25 ~~not more than two years,~~ and if he has previously been convicted for
 26 one or more offenses under any law of North Carolina or any law of
 27 the United States or any other state, which offenses are punishable
 28 under any provision of this Article, he shall be punished as a Class I
 29 ~~felon;~~ felon. The prior conviction used to raise the current offense to a
 30 Class I felony shall not be used to calculate the prior record level;
 31 (4) If any person commits ~~an offense under this Article for which the~~
 32 ~~prescribed punishment includes imprisonment for not more than six~~
 33 ~~months~~ a Class 2 misdemeanor, and if he has previously been convicted
 34 for one or more offenses under any law of North Carolina or any law
 35 of the United States or any other state, which offenses are punishable
 36 under any provision of this Article, he shall be guilty of a
 37 ~~misdemeanor and shall be sentenced to a term of imprisonment of not~~
 38 ~~more than two years or fined not more than two thousand dollars~~
 39 ~~(\$2,000), or both in the discretion of the court;~~ Class 1 misdemeanor.
 40 The prior conviction used to raise the current offense to a Class 1
 41 misdemeanor shall not be used to calculate the prior conviction level;
 42 (5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by
 43 selling or delivering a controlled substance to a person under 16 years
 44 of age or a pregnant female shall be punished as a Class E felon.

- 1 Mistake of age is not a defense to a prosecution under this section. It
2 shall not be a defense that the defendant did not know that the recipient
3 was pregnant;
- 4 (6) For the purpose of increasing ~~punishment~~, punishment under G.S. 90-
5 95(e)(3) and (e)(4), previous convictions for offenses shall be counted
6 by the number of separate trials at which final convictions were
7 obtained and not by the number of charges at a single trial;
- 8 (7) If any person commits an offense under this Article for which the
9 prescribed punishment requires that any sentence of imprisonment be
10 suspended, and if he has previously been convicted for one or more
11 offenses under any law of North Carolina or any law of the United
12 States or any other state, which offenses are punishable under any
13 provision of this Article, he shall be guilty of a ~~misdemeanor and shall~~
14 ~~be sentenced to a term of imprisonment of not more than six months or~~
15 ~~fined not more than five hundred dollars (\$500.00), or both in the~~
16 ~~discretion of the court;~~ Class 2 misdemeanor;
- 17 (8) Any person 21 years of age or older who commits an offense under
18 G.S. 90-95(a)(1) on property used for an elementary or secondary
19 school or within 300 feet of the boundary of real property used for an
20 elementary or secondary school shall be punished as a Class E felon.
21 For purposes of this subdivision, the transfer of less than five grams of
22 marijuana for no remuneration shall not constitute a delivery in
23 violation of G.S. 90-95(a)(1). ~~A person sentenced under this~~
24 ~~subdivision must serve a mandatory term of imprisonment of no less~~
25 ~~than two years, notwithstanding the provisions of G.S. 90-95(h)(5) or~~
26 ~~any other law. The sentencing judge may not suspend the mandatory~~
27 ~~two year term of imprisonment or place the person on probation for~~
28 ~~the mandatory two year term of imprisonment. During that time the~~
29 ~~prisoner is not eligible for early parole or early release.~~
- 30 (9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal
31 institution or local confinement facility shall be guilty of a Class I
32 felony. ~~A person sentenced under this subdivision shall serve a~~
33 ~~mandatory minimum term of imprisonment of no less than two years~~
34 ~~for a violation of this subdivision which shall run consecutively with~~
35 ~~and shall commence at the expiration of any sentence already being~~
36 ~~served by that person. The sentencing judge may not suspend the~~
37 ~~mandatory minimum two year term of imprisonment.~~
- 38 (f) Any person convicted of an offense or offenses under this Article who is
39 sentenced to an active term of imprisonment that is less than the maximum active term
40 that could have been imposed may, in addition, be sentenced to a term of special
41 probation. Except as indicated in this subsection, the administration of special
42 probation shall be the same as probation. The conditions of special probation shall be
43 fixed in the same manner as probation, and the conditions may include requirements for
44 rehabilitation treatment. Special probation shall follow the active sentence ~~but shall not~~

1 ~~preclude parole. If parole is granted, special probation shall become effective in place of~~
2 ~~parole. sentence.~~ No term of special probation shall exceed five years. Special
3 probation may be revoked in the same manner as probation; upon revocation, the
4 original term of imprisonment may be increased by no more than the difference between
5 the active term of imprisonment actually served and the maximum active term that
6 could have been imposed at trial for the offense or offenses for which the person was
7 convicted, and the resulting term of imprisonment need not be diminished by the time
8 spent on special probation. ~~A person whose special probation term has been revoked~~
9 ~~may be required to serve all or part of the remainder of the new term of imprisonment.~~

10 (g) Whenever matter is submitted to the North Carolina State Bureau of
11 Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory
12 or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical
13 analysis to determine if the matter is or contains a controlled substance, the report of
14 that analysis certified to upon a form approved by the Attorney General by the person
15 performing the analysis shall be admissible without further authentication in all
16 proceedings in the district court division of the General Court of Justice as evidence of
17 the identity, nature, and quantity of the matter analyzed.

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

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

24 a. Is in excess of 50 pounds, but less than 100 pounds, such person
25 shall be punished as a Class H felon and shall be sentenced to a
26 minimum term of at least five years-25 months and a maximum
27 term of 30 months in the State's prison and shall be fined not
28 less than five thousand dollars (\$5,000);

29 b. Is 100 pounds or more, but less than 2,000 pounds, such person
30 shall be punished as a Class G felon and shall be sentenced to a
31 minimum term of at least seven years-35 months and a
32 maximum term of 42 months in the State's prison and shall be
33 fined not less than twenty-five thousand dollars (\$25,000);

34 c. Is 2,000 pounds or more, but less than 10,000 pounds, such
35 person shall be punished as a Class F felon and shall be
36 sentenced to a minimum term of at least 14 years-70 months
37 and a maximum term of 84 months in the State's prison and
38 shall be fined not less than fifty thousand dollars (\$50,000);

39 d. Is 10,000 pounds or more, such person shall be punished as a
40 Class D felon and shall be sentenced to a minimum term of at
41 least 35 years-175 months and a maximum term of 219 months
42 in the State's prison and shall be fined not less than two hundred
43 thousand dollars (\$200,000).

- 1 (2) Any person who sells, manufactures, delivers, transports, or possesses
2 1,000 tablets, capsules or other dosage units, or the equivalent
3 quantity, or more of methaqualone, or any mixture containing such
4 substance, shall be guilty of a felony which felony shall be known as
5 'trafficking in methaqualone' and if the quantity of such substance or
6 mixture involved:
- 7 a. Is 1,000 or more dosage units, or equivalent quantity, but less
8 than 5,000 dosage units, or equivalent quantity, such person
9 shall be punished as a Class G felon and shall be sentenced to a
10 minimum term of at least seven years 35 months and a
11 maximum term of 42 months in the State's prison and shall be
12 fined not less than twenty-five thousand dollars (\$25,000);
- 13 b. Is 5,000 or more dosage units, or equivalent quantity, but less
14 than 10,000 dosage units, or equivalent quantity, such person
15 shall be punished as a Class F felon and shall be sentenced to a
16 minimum term of at least 14 years 70 months and a maximum
17 term of 84 months in the State's prison and shall be fined not
18 less than fifty thousand dollars (\$50,000);
- 19 c. Is 10,000 or more dosage units, or equivalent quantity, such
20 person shall be punished as a Class D felon and shall be
21 sentenced to a minimum term of at least 35 years 175 months
22 and a maximum term of 219 months in the State's prison and
23 shall be fined not less than two hundred thousand dollars
24 (\$200,000).
- 25 (3) Any person who sells, manufactures, delivers, transports, or possesses
26 28 grams or more of cocaine and any salt, isomer, salts of isomers,
27 compound, derivative, or preparation thereof, or any coca leaves and
28 any salt, isomer, salts of isomers, compound, derivative, or preparation
29 of coca leaves, and any salt, isomer, salts of isomers, compound,
30 derivative or preparation thereof which is chemically equivalent or
31 identical with any of these substances (except decocanized coca leaves
32 or any extraction of coca leaves which does not contain cocaine) or
33 any mixture containing such substances, shall be guilty of a felony,
34 which felony shall be known as 'trafficking in cocaine' and if the
35 quantity of such substance or mixture involved:
- 36 a. Is 28 grams or more, but less than 200 grams, such person shall
37 be punished as a Class G felon and shall be sentenced to a
38 minimum term of at least seven years 35 months and a
39 maximum term of 42 months in the State's prison and shall be
40 fined not less than fifty thousand dollars (\$50,000);
- 41 b. Is 200 grams or more, but less than 400 grams, such person
42 shall be punished as a Class F felon and shall be sentenced to a
43 minimum term of at least 14 years 70 months and a maximum

- 1 term of 84 months in the State's prison and shall be fined not
2 less than one hundred thousand dollars (\$100,000);
- 3 c. Is 400 grams or more, such person shall be punished as a Class
4 D felon and shall be sentenced to a minimum term of ~~at least 35~~
5 ~~years~~ 175 months and a maximum term of 219 months in the
6 State's prison and shall be fined at least two hundred fifty
7 thousand dollars (\$250,000).
- 8 (3a) Any person who sells, manufactures, delivers, transports, or possesses
9 1,000 tablets, capsules or other dosage units, or the equivalent
10 quantity, or more of amphetamine, its salts, optical isomers, and salts
11 of its optical isomers or any mixture containing such substance, shall
12 be guilty of a felony which felony shall be known as 'trafficking in
13 amphetamine' and if the quantity of such substance or mixture
14 involved:
- 15 a. Is 1,000 or more dosage units, or equivalent quantity, but less
16 than 5,000 dosage units, or equivalent quantity, such person
17 shall be punished as a Class G felon and shall be sentenced to a
18 minimum term of ~~at least seven years~~ 35 months and a
19 maximum term of 42 months in the State's prison and shall be
20 fined not less than twenty-five thousand dollars (\$25,000);
- 21 b. Is 5,000 or more dosage units, or equivalent quantity, but less
22 than 10,000 dosage units, or equivalent quantity, such person
23 shall be punished as a Class F felon and shall be sentenced to a
24 minimum term of ~~at least 14 years~~ 70 months and a maximum
25 term of 84 months in the State's prison and shall be fined not
26 less than fifty thousand dollars (\$50,000);
- 27 c. Is 10,000 or more dosage units, or equivalent quantity, such
28 person shall be punished as a Class D felon and shall be
29 sentenced to a minimum term of ~~at least 35 years~~ 175 months
30 and a maximum term of 219 months in the State's prison and
31 shall be fined not less than two hundred thousand dollars
32 (\$200,000).
- 33 (3b) Any person who sells, manufactures, delivers, transports, or possesses
34 28 grams or more of methamphetamine shall be guilty of a felony
35 which felony shall be known as 'trafficking in methamphetamine' and
36 if the quantity of such substance or mixture involved:
- 37 a. Is 28 grams or more, but less than 200 grams, such person shall
38 be punished as a Class G felon and shall be sentenced to a
39 minimum term of ~~at least seven years~~ 35 months and a
40 maximum term of 42 months in the State's prison and shall be
41 fined not less than fifty thousand dollars (\$50,000);
- 42 b. Is 200 grams or more, but less than 400 grams, such person
43 shall be punished as a Class F felon and shall be sentenced to a
44 minimum term of ~~at least 14 years~~ 70 months and a maximum

- 1 term of 84 months in the State's prison and shall be fined not
2 less than one hundred thousand dollars (\$100,000);
- 3 c. Is 400 grams or more, such person shall be punished as a Class
4 D felon and shall be sentenced to a minimum term of ~~at least 35~~
5 ~~years~~ 175 months and a maximum term of 219 months in the
6 State's prison and shall be fined at least two hundred fifty
7 thousand dollars (\$250,000).
- 8 (4) Any person who sells, manufactures, delivers, transports, or possesses
9 four grams or more of opium or opiate, or any salt, compound,
10 derivative, or preparation of opium or opiate (except apomorphine,
11 nalbuphine, analoxone and naltrexone and their respective salts),
12 including heroin, or any mixture containing such substance, shall be
13 guilty of a felony which felony shall be known as 'trafficking in opium
14 or heroin' and if the quantity of such controlled substance or mixture
15 involved:
- 16 a. Is four grams or more, but less than 14 grams, such person shall
17 be punished as a Class F felon and shall be sentenced to a
18 minimum term of ~~at least 14 years~~ 70 months and a maximum
19 term of 84 months in the State's prison and shall be fined not
20 less than fifty thousand dollars (\$50,000);
- 21 b. Is 14 grams or more, but less than 28 grams, such person shall
22 be punished as a Class E felon and shall be sentenced to a
23 minimum term of ~~at least 18 years~~ 90 months and a maximum
24 term of 120 months in the State's prison and shall be fined not
25 less than one hundred thousand dollars (\$100,000);
- 26 c. Is 28 grams or more, such person shall be punished as a Class C
27 felon and shall be sentenced to a minimum term of ~~at least 45~~
28 ~~years~~ 225 months and a maximum term of 279 months in the
29 State's prison and shall be fined not less than five hundred
30 thousand dollars (\$500,000).
- 31 (4a) Any person who sells, manufactures, delivers, transports, or
32 possesses 100 tablets, capsules, or other dosage units, or the
33 equivalent quantity, or more, of Lysergic Acid Diethylamide, or any
34 mixture containing such substance, shall be guilty of a felony, which
35 felony shall be known as 'trafficking in Lysergic Acid Diethylamide'.
36 If the quantity of such substance or mixture involved:
- 37 a. Is 100 or more dosage units, or equivalent quantity, but less
38 than 500 dosage units, or equivalent quantity, such person shall
39 be punished as a Class G felon and shall be sentenced to a
40 minimum term of ~~at least seven years~~ 35 months and a
41 maximum term of 42 months in the State's prison and shall be
42 fined not less than twenty-five thousand dollars (\$25,000);
- 43 b. Is 500 or more dosage units, or equivalent quantity, but less
44 than 1,000 dosage units, or equivalent quantity, such person

1 shall be punished as a Class F felon and shall be sentenced to a
2 minimum term of at least 14 years-70 months and a maximum
3 term of 84 months in the State's prison and shall be fined not
4 less than fifty thousand dollars (\$50,000);

5 c. Is 1,000 or more dosage units, or equivalent quantity, such
6 person shall be punished as a Class D felon and shall be
7 sentenced to a minimum term of at least 35 years-175 months
8 and a maximum term of 219 months in the State's prison and
9 shall be fined not less than two hundred thousand dollars
10 (\$200,000).

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

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

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

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

31 "(h) A person sentenced under Article 81B of Chapter 15A shall not be released
32 pursuant to this section."

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

34 "**§ 148-13. Regulations as to custody grades, privileges, gain time credit, etc.**

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

41 (a1) The Secretary of Correction shall adopt rules to specify the rates at, and
42 circumstances under, which earned time authorized by G.S. 15A-1340.13(d) and G.S.
43 15A-1340.20(d) may be earned or forfeited by persons serving activated sentences of
44 imprisonment for felony or misdemeanor convictions.

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

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

13 (d) ~~With respect to prisoners serving prison or jail terms for felonies that~~
14 ~~occurred on or after the effective date of Article 81A of Chapter 15A, the Secretary of~~
15 ~~Correction shall issue regulations authorizing gain time credit to be deducted from the~~
16 ~~terms of such prisoners, in addition to the good behavior credit authorized by G.S. 15A-~~
17 ~~1340.7. Gain time credit may be granted for meritorious conduct and shall be granted~~
18 ~~for performance of regular work and regular participation in study, training, work~~
19 ~~release, and other rehabilitative programs inside or outside the prison or jail. Gain time~~
20 ~~credit earned pursuant to regulations issued under this subsection shall not be subject to~~
21 ~~forfeiture for misconduct. Gain time shall be administered to qualified prisoners as~~
22 ~~follows:~~

- 23 (1) ~~Gain Time I. In addition to the good behavior credit authorized by G.S.~~
24 ~~15A-1340.7, prisoners who perform work assignments requiring at least~~
25 ~~four hours of actual work per day, and prisoners who participate~~
26 ~~in study, training, or other rehabilitative programs requiring at least~~
27 ~~four hours of productive activity per day, shall receive gain time credit~~
28 ~~at the rate of two days per month.~~
- 29 (2) ~~Gain Time II. In addition to the good behavior credit authorized by~~
30 ~~G.S. 15A-1340.7, prisoners who perform work assignments requiring~~
31 ~~at least six hours of actual work per day, prisoners who perform in~~
32 ~~part time work release programs, and prisoners who participate in~~
33 ~~study, training, or other rehabilitative programs requiring at least six~~
34 ~~hours of productive activity per day, shall receive gain time credit at~~
35 ~~the rate of four days per month.~~
- 36 (3) ~~Gain Time III. In addition to the good behavior credit authorized by~~
37 ~~G.S. 15A-1340.7, prisoners who perform work assignments requiring~~
38 ~~special skills or special responsibilities and requiring at least six hours~~
39 ~~of actual work per day, prisoners who perform in full time work~~
40 ~~release programs, and prisoners who participate in full time study,~~
41 ~~training, or other rehabilitative programs shall receive gain time credit~~
42 ~~at the rate of six days per month.~~

43 ~~The Secretary of Correction may, in his discretion, grant gain time credit at a rate~~
44 ~~greater than the rates specified in this subsection for meritorious conduct or emergency~~

1 ~~work performed, provided, however, that gain time granted for emergency work~~
2 ~~performed shall not exceed 30 days per month, nor shall gain time granted for~~
3 ~~meritorious conduct exceed 30 days for each act of meritorious conduct.~~

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

8 (f) ~~The provisions of this section do not apply to persons sentenced to a term of~~
9 ~~special probation under G.S. 15A-1344(e) or G.S. 15A-1351(a) or to persons convicted~~
10 ~~pursuant to G.S. 130A-25 of failing to obtain the treatment required by Part 3 or Part 5~~
11 ~~of Article 6 of Chapter 130A or of violating G.S. 130A-144(f) or G.S. 130A-145. G.S.~~
12 ~~15A-1351(a)."~~

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

14 "**§ 148-32.1. Local confinement, costs, alternate facilities, parole, work release.**

15 (a) The Department of Correction shall pay each local confinement facility a
16 standard sum set by the General Assembly in its appropriation acts at a per day, per
17 inmate rate, for the cost of providing food, clothing, personal items, supervision and
18 necessary ordinary medical services to those inmates committed to the custody of the
19 local confinement facility to serve sentences of 30 days or more. This reimbursement
20 shall not include any period of detention prior to actual commitment by the sentencing
21 court. The Department shall also pay to the local confinement facility extraordinary
22 medical expenses incurred for the inmates, defined as follows:

- 23 (1) Medical expenses incurred as a result of providing health care to an
24 inmate as an inpatient (hospitalized);
- 25 (2) Other medical expenses when the total cost exceeds thirty-five dollars
26 (\$35.00) per occurrence or illness as a result of providing health care
27 to an inmate as an outpatient (nonhospitalized); and
- 28 (3) Cost of replacement of eyeglasses and dental prosthetic devices if
29 those eyeglasses or devices are broken while the inmate is
30 incarcerated, provided the inmate was using the eyeglasses or devices
31 at the time of his commitment and then only if prior written consent of
32 the Department is obtained by the local facility.

33 (b) In the event that the custodian of the local confinement facility certifies in
34 writing to the clerk of the superior court in the county in which said local confinement
35 facility is located that the local confinement facility is filled to capacity, or that the
36 facility cannot reasonably accommodate any more prisoners due to segregation
37 requirements for particular prisoners, or that the custodian anticipates, in light of local
38 experiences, an influx of temporary prisoners at that time, or if the local confinement
39 facility does not meet the minimum standards published pursuant to G.S. 153A-221, any
40 judge of the district court in the district court district as defined in G.S. 7A-133 where
41 the facility is located, or any superior court judge who has jurisdiction pursuant to G.S.
42 7A-47.1 or 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the
43 facility is located may order that the prisoner be transferred to any other qualified local
44 confinement facility within that district or within another such district where space is

1 available, including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the
2 prisoner is a non-violent misdemeanor, which local facility shall accept the transferred
3 prisoner, if the prison population has exceeded the limits established in G.S. 148-4.1(d).
4 If no such local confinement facility is available, then any such judge may order the
5 prisoner transferred to such camp or facility as the proper authorities of the Department
6 of Correction shall designate, notwithstanding that the term of imprisonment of the
7 prisoner is 180 days or less. In no event, however, shall a prisoner whose term of
8 imprisonment is less than 30 days be assigned or ordered transferred to any such camp
9 or facility.

10 (c) When a prisoner sentenced for a conviction of impaired driving under G.S.
11 20-138.1 is assigned to a local confinement facility pursuant to this section, the clerk of
12 the superior court in the county in which the sentence was imposed shall immediately
13 forward a copy of the commitment order to the ~~Parole Commission~~ Post-Release
14 Supervision and Parole Commission so that the prisoner will be eligible for parole
15 pursuant to G.S. 15A-1371.

16 (d) When a prisoner serving a sentence of 30 days or more in a local confinement
17 facility is placed on work release pursuant to a recommendation of the sentencing court,
18 the custodian of the facility shall forward the prisoner's work-release earnings to the
19 Department of Correction, which shall disburse the earnings as determined under G.S.
20 148-33.1(f). When a prisoner serving a sentence of 30 days or more in a local
21 confinement facility is placed on work release pursuant to an order of the sentencing
22 court, the custodian of the facility shall forward the prisoner's work-release earnings to
23 the clerk of the court that sentenced the prisoner or to the Department of Correction, as
24 provided in the prisoner's commitment order. The clerk or the Department, as
25 appropriate, shall disburse the earnings as provided in the prisoner's commitment order.
26 Upon agreement between the Department of Correction and the custodian of the local
27 confinement facility, however, the clerk may disburse to the local confinement facility
28 the amount of the earnings to be paid for the cost of the prisoner's keep, and that amount
29 shall be set off against the reimbursement to be paid by the Department to the local
30 confinement facility pursuant to G.S. 148-32.1(a).

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

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

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

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

9 Sec. 36. G.S. 162-60 reads as rewritten:

10 **"§ 162-60. Reduction in sentence allowed for work.**

11 In addition to any ~~gain earned~~ time credit ~~to which he is otherwise entitled~~ a prisoner
12 may be awarded under G.S. 15A-1340.20, a prisoner who has faithfully performed the
13 duties assigned to him pursuant to G.S. 162-58 is entitled to a reduction in his sentence
14 of four days for each 30 days of work performed. The person having custody of the
15 prisoner, as defined in G.S. 162-59, shall be the sole judge as to whether the prisoner
16 has faithfully performed his duties. A prisoner who escapes or attempts to escape while
17 performing work pursuant to G.S. 162-58 shall forfeit any reduction in sentence that he
18 would have been entitled to under this section."

19 Sec. 37. G.S. 15A-1352 reads as rewritten:

20 **"§ 15A-1352. Commitment to Department of Correction or local confinement**
21 **facility.**

22 (a) A person sentenced to imprisonment for a misdemeanor under this Article or
23 for nonpayment of a fine under Article 84 of this Chapter shall be committed for the
24 term designated by the court to the custody of the Department of Correction or to a local
25 confinement facility. If the sentence imposed for a misdemeanor is for a period of ~~180~~
26 90 days or less, the commitment must be to a facility other than one maintained by the
27 Department of Correction, except as provided in G.S. 148-32.1(b).

28 If a person is sentenced to imprisonment for a misdemeanor under this Article or for
29 nonpayment of a fine under Article 84 of this Chapter, the sentencing judge shall make
30 a finding of fact as to whether the person would be suitable for placement in a county
31 satellite jail/work release unit operated pursuant to G.S. 153A-230.3. If the sentencing
32 judge makes a finding of fact that the person would be suitable for placement in a
33 county satellite jail/work release unit and the person meets the requirements listed in
34 G.S. 153A-230.3(a)(1), then the custodian of the local confinement facility may transfer
35 the misdemeanant to a county satellite jail/work release unit.

36 (b) A person sentenced to imprisonment for a felony under this Article shall be
37 committed for the term designated by the court to the custody of the Department of
38 Correction; except that, upon request of the sheriff or the board of commissioners of a
39 county, the presiding judge may, in his discretion, sentence the person to a local
40 confinement facility in that county.

41 (c) A person sentenced to imprisonment for nonpayment of a fine under Article
42 84, Fines, shall be committed for the term designated by the court:

43 (1) To the custody of the Department of Correction if the person was fined
44 for conviction of a felony;

1 (2) To the custody of the Department of Correction or to a local
2 confinement facility if the person was fined for conviction of a
3 misdemeanor, provided that if the sentence imposed is for a period of
4 ~~180~~90 days or less, the commitment shall be to a facility other than
5 one maintained by the Department of Correction, except as provided in
6 G.S. 148-32.1(b).

7 (d) Notwithstanding any other provision of law, when the sentencing court, with
8 the consent of the person sentenced, orders that a person convicted of a misdemeanor be
9 granted work release, the court may commit the person to a specific prison facility or
10 local confinement facility or satellite jail/work release unit within the county of the
11 sentencing court in order to facilitate the work release arrangement. When appropriate
12 to facilitate the work release arrangement, the sentencing court may, with the consent of
13 the sheriff or board of commissioners, commit the person to a specific local
14 confinement facility or satellite jail/work release unit in another county, or, with the
15 consent of the Department of Correction, commit the person to a specific prison facility
16 in another county. The Department of Correction may transfer a prisoner committed to
17 a specific prison facility to a different facility when necessary to alleviate overcrowding
18 or for other administrative purposes."

19 Sec. 38. G.S. 15A-1373 reads as rewritten:

20 "**§ 15A-1373. Incidents of parole.**

21 (a) Conditionality of Parole. – Unless terminated sooner as provided in
22 subsection (b), parole remains conditional and subject to revocation.

23 (b) Early Termination. – The ~~Parole Commission~~Post-Release Supervision and
24 Parole Commission may terminate a period of parole and discharge the parolee at any
25 time after the expiration of one year of successful parole if warranted by the conduct of
26 the parolee and the ends of justice.

27 (c) Modification of Conditions. – The ~~Parole Commission~~Post-Release
28 Supervision and Parole Commission may for good cause shown modify the conditions
29 of parole at any time prior to the expiration or termination of the period for which the
30 parole remains conditional.

31 (d) Effect of Violation. – If the parolee violates a condition at any time prior to
32 the expiration or termination of the period, the Commission may continue him on the
33 existing parole, with or without modifying the conditions, or, if continuation or
34 modification is not appropriate, may revoke the parole as provided in G.S. 15A-1376
35 and reimprison the parolee for a term consistent with the following requirements:

36 (1) The time the parolee was at liberty on parole and in compliance with
37 all terms and conditions of that parole shall be credited on a day-for-
38 day basis against the maximum term of imprisonment imposed by the
39 court under G.S. 15A-1351, except that the parolee shall receive no
40 credit for the last six months of his parole.

41 (2) The prisoner must be given credit against the term of reimprisonment
42 for all time spent in custody as a result of revocation proceedings
43 under G.S. 15A-1376.

1 (e) Re-parole. – A prisoner who has been reimprisoned following parole may be
2 re-paroled by the ~~Parole Commission~~ Post-Release Supervision and Parole Commission
3 subject to the provisions which govern initial parole. In the event that a defendant
4 serves the final six months of his maximum imprisonment as a result of being
5 recommitted for violation of parole, he may not be required to serve a further period on
6 parole.

7 (f) Timing of Revocation. – The ~~Parole Commission~~ Post-Release Supervision
8 and Parole Commission may revoke parole for violation of a condition during the period
9 of parole. The Commission also may revoke following the period of parole if:

- 10 (1) Before the expiration of the period of parole, the Commission has
11 recorded its intent to conduct a revocation hearing, and
12 (2) The Commission finds that every reasonable effort has been made to
13 notify the parolee and conduct the hearing earlier."

14 Sec. 39. G.S. 15A-1374(a) reads as rewritten:

15 "(a) In General. – The ~~Parole Commission~~ Post-Release Supervision and Parole
16 Commission may in its discretion impose conditions of parole it believes reasonably
17 necessary to insure that the parolee will lead a law-abiding life or to assist him to do so.
18 The Commission must provide as an express condition of every parole that the parolee
19 not commit another crime during the period for which the parole remains subject to
20 revocation. When the Commission releases a person on parole, it must give him a
21 written statement of the conditions on which he is being released."

22 Sec. 40. G.S. 15A-1376 reads as rewritten:

23 "**§ 15A-1376. Arrest and hearing on parole violation.**

24 (a) Arrest for Violation of Parole. – A parolee is subject to arrest by a law-
25 enforcement officer or a parole officer for violation of conditions of parole only upon
26 the issuance of an order of temporary or conditional revocation of parole by the ~~Parole~~
27 ~~Commission~~ Post-Release Supervision and Parole Commission. However, a parole
28 revocation hearing under subsection (e) may be held without first arresting the parolee.

29 (b) When and Where Preliminary Hearing on Parole Violation Required. –
30 Unless the hearing required by subsection (e) is first held or the parolee waives the
31 hearing or a continuance is requested by the parolee, a preliminary hearing on parole
32 violation must be held reasonably near the place of the alleged violation or arrest and
33 within seven working days of the arrest of a parolee to determine whether there is
34 probable cause to believe that he violated a condition of parole. Otherwise, the parolee
35 must be released seven working days after his arrest to continue on parole pending a
36 hearing. If the parolee is not within the State, his preliminary hearing is as prescribed
37 by G.S. 148-65.1A.

38 (c) Officers to Conduct Hearing. – The preliminary hearing on parole violation
39 must be conducted by a judicial official, or by a hearing officer designated by the ~~Parole~~
40 ~~Commission~~ Post-Release Supervision and Parole Commission. No person employed by
41 the Department of Correction may serve as a hearing officer at a hearing provided in
42 this section unless he is a member of the ~~Parole Commission~~ Post-Release Supervision
43 and Parole Commission or is employed solely as a hearing officer.

1 (d) Procedure for Preliminary Hearing on Parole Violation. – The Department of
2 Correction must give the parolee notice of the preliminary hearing and its purpose,
3 including a statement of the violations alleged. At the hearing, the parolee may appear
4 and speak in his own behalf, may present relevant information, and may, on request,
5 personally question witnesses and adverse informants, unless the hearing officer finds
6 good cause for not allowing confrontation. If the person holding the hearing determines
7 there is probable cause to believe the parolee violated his parole, he must summarize the
8 reasons for his determination and the evidence he relied on. Formal rules of evidence
9 do not apply at the hearing. If probable cause is found, the parolee may be held in the
10 custody of the Department of Correction to serve the appropriate term of imprisonment,
11 subject to the outcome of a revocation hearing under subsection (e).

12 (e) Revocation Hearing. – Before finally revoking parole, the ~~Parole Commission~~
13 Post-Release Supervision and Parole Commission must, unless the parolee waived the
14 hearing or the time limit, provide a hearing within 45 days of the parolee's
15 reconfinement to determine whether to revoke parole finally. The ~~Parole Commission~~
16 Post-Release Supervision and Parole Commission must adopt regulations governing the
17 hearing and must file and publish them as provided in Article 5 of Chapter 150B of the
18 General Statutes."

19 Sec. 41. G.S. 143B-264 reads as rewritten:

20 "**§ 143B-264. Department of Correction – organization.**

21 The Department of Correction shall be organized initially to include the ~~Parole~~
22 ~~Commission~~Post-Release Supervision and Parole Commission, the Board of Correction,
23 the Division of Prisons, the Division of Youth Development, the Division of Adult
24 Probation and Parole, and such other divisions as may be established under the
25 provisions of the Executive Organization Act of 1973.

26 The Department shall establish a Substance Abuse Program. All substance abuse
27 programs established or in existence shall be administered by the Department of
28 Correction under the Substance Abuse Program."

29 Sec. 42. G.S. 143B-266 reads as rewritten:

30 "**§ 143B-266. ~~Parole Commission~~Post-Release Supervision and Parole Commission**
31 **– creation, powers and duties.**

32 (a) There is hereby created a ~~Parole Commission~~Post-Release Supervision and
33 Parole Commission of the Department of Correction with the authority to grant paroles,
34 including both regular and temporary paroles, to persons held by virtue of any final
35 order or judgment of any court of this State as provided in Chapter 148 of the General
36 Statutes and laws of the State of North Carolina, except that for persons sentenced under
37 Article 81B of Chapter 15A of the General Statutes, only those sentenced to life
38 imprisonment are eligible for parole. The Commission shall also have authority to
39 revoke, terminate, and suspend paroles of such persons (including persons placed on
40 parole on or before the effective date of the Executive Organization Act of 1973) and to
41 assist the Governor in exercising his authority in granting reprieves, commutations, and
42 pardons, and shall perform such other services as may be required by the Governor in
43 exercising his powers of executive clemency. The Commission shall also have

1 authority to revoke and terminate persons on post-release supervision, as provided in
2 Article 84A of Chapter 15A of the General Statutes.

3 (b) All releasing authority previously resting in the Commissioner and
4 Commission of Correction with the exception of authority for extension of the limits of
5 the place of confinement of a prisoner contained in G.S. 148-4 is hereby transferred to
6 the ~~Parole Commission~~Post-Release Supervision and Parole Commission. Specifically,
7 such releasing authority includes work release (G.S. 148-33.1), indeterminate-sentence
8 release (G.S. 148-42), and release of youthful offenders (G.S. 148-49.8), provided the
9 individual considered for work release or indeterminate-sentence release shall have been
10 recommended for release by the Secretary of Correction or his designee.

11 (c) The Commission is authorized and empowered to adopt such rules and
12 regulations, not inconsistent with the laws of this State, in accordance with which
13 prisoners eligible for parole consideration may have their cases reviewed and
14 investigated and by which such proceedings may be initiated and considered. All rules
15 and regulations heretofore adopted by the Board of Paroles shall remain in full force and
16 effect unless and until repealed or superseded by action of the ~~Parole Commission~~Post-
17 Release Supervision and Parole Commission. All rules and regulations adopted by the
18 Commission shall be enforced by the Department of Correction.

19 (d) The Commission is authorized and empowered to impose as a condition of
20 parole or post-release supervision that restitution or reparation be made by the prisoner
21 in accordance with the provisions of G.S. 148-57.1. The Commission is further
22 authorized and empowered to make restitution or reparation a condition of work release
23 in accordance with the provisions of G.S. 148-33.2."

24 Sec. 43. G.S. 143B-267 reads as rewritten:

25 "**§ 143B-267. ~~Parole Commission~~Post-Release Supervision and Parole Commission**
26 **– members; selection; removal; chairman; compensation; quorum;**
27 **services.**

28 The ~~Parole Commission~~Post-Release Supervision and Parole Commission shall
29 consist of five full-time members. The five full-time members shall be appointed by the
30 Governor from persons whose recognized ability, training, experience, and character
31 qualify them for service on the Commission. The terms of office of the five members
32 presently serving on the Commission shall expire on June 30, 1977. Thereafter, the
33 terms of office of persons appointed by the Governor as members of the Commission
34 shall be for four years or until their successors are appointed and qualify. Any
35 appointment to fill a vacancy on the Commission created by the resignation, removal,
36 death or disability of a full-time member shall be for the balance of the unexpired term
37 only.

38 The Governor shall have the authority to remove any member of the Commission
39 from office for misfeasance, malfeasance or nonfeasance, pursuant to the provisions of
40 G.S. 143B-13. The Governor shall designate a full-time member of the Commission to
41 serve as chairman of the Commission at the pleasure of the Governor.

42 With regard to the transaction of the business of the Commission the following
43 procedure shall be followed: The chairman shall designate panels of two voting
44 commission members and shall designate a third commissioner to serve as an alternate

1 member of a panel. Insofar as practicable, the chairman shall assign the members to
2 panels in such fashion that each commissioner sits a substantially equal number of times
3 with each other commissioner. Whenever any matter of business, such as the granting,
4 denying, revoking or rescinding of parole, or the authorization of work-release
5 privileges to a prisoner, shall come before the Commission for consideration and
6 action, the chairman shall refer such matter to a panel. Action may be taken by
7 concurring vote of the two sitting panel members. If there is not a concurring vote of
8 the two panel members, the matter will be referred to the alternate member who shall
9 cast the deciding vote. However, no person serving a sentence of life imprisonment
10 shall be granted parole or work-release privileges except by majority vote of the full
11 commission.

12 The full-time members of the Commission shall receive the salary fixed by the
13 General Assembly in the Current Operations Appropriations Act and shall receive
14 necessary travel and subsistence expenses in accordance with the provisions of G.S.
15 138-6.

16 All clerical and other services required by the Commission shall be supplied by the
17 Secretary of Correction."

18 Sec. 44. G.S. 148-52.1 reads as rewritten:

19 "**§ 148-52.1. Prohibited political activities of member of ~~Parole Commission~~Post-**
20 **Release Supervision and Parole Commission.**

21 No member of the ~~Parole Commission~~Post-Release Supervision and Parole
22 Commission shall be permitted to use his position to influence elections or the political
23 action of any person, serve as a member of the campaign committee of any political
24 party, interfere with or participate in the preparation for any election or the conduct
25 thereof at the polling place, or be in any manner concerned in the demanding, soliciting
26 or receiving of any assessments, subscriptions or contributions, whether voluntary or
27 involuntary, to any political party. Any ~~Parole Commission~~Post-Release Supervision
28 and Parole Commission member who shall violate any of the provisions of this section
29 shall be subject to dismissal from office."

30 Sec. 45. G.S. 148-53 reads as rewritten:

31 "**§ 148-53. Investigators and investigations of cases of prisoners.**

32 For the purpose of investigating the cases of prisoners, the Department of Correction
33 is hereby authorized and empowered to appoint an adequate staff of competent
34 investigators, particularly qualified for such work, with such reasonable clerical
35 assistance as may be required, who shall, under the rules and regulations duly adopted
36 by the Post-Release Supervision and Parole Commission, investigate all cases
37 designated by it, investigate cases of prisoners eligible for post-release supervision, and
38 otherwise aid the Commission in passing upon the question of the parole and post-
39 release supervision of prisoners, to the end that every prisoner in the custodial care of
40 the State may receive full, fair, and just consideration."

41 Sec. 46. G.S. 148-54 reads as rewritten:

42 "**§ 148-54. Parole and post-release supervision supervisors provided for; duties.**

43 The Department of Correction is hereby authorized to appoint a sufficient number of
44 competent parole and post-release supervision supervisors, who shall be particularly

1 qualified for and adapted for the work required of them, and who shall under the
2 direction of the Department of Correction, and under regulations prescribed by the
3 Department of Correction after consultation with the Commission, exercise supervision
4 and authority over paroled prisoners and persons on post-release supervision, assist
5 paroled prisoners and persons on post-release supervision, and those who are to be
6 paroled or released for post-release supervision in finding and retaining self-supporting
7 employment, and to promote rehabilitation work with paroled and post-release
8 supervised prisoners, to the end that they may become law-abiding citizens. The
9 supervisors shall also, under the direction of the Department of Correction, maintain
10 frequent contact with paroled and post-release supervised prisoners and find out
11 whether or not they are observing the conditions of their paroles or post-release
12 supervision, and assist them in every possible way toward compliance with the
13 conditions, and they shall perform such other duties in connection with paroled
14 prisoners as the Department of Correction may require. The number of supervisors may
15 be increased by the Department of Correction as and when the number of paroled and
16 post-release supervised prisoners to be supervised requires or justifies such increase."

17 Sec. 47. G.S. 148-56 reads as rewritten:

18 "**§ 148-56. Assistance in supervision of parolees or post-release supervisees and**
19 **preparation of case histories.**

20 Upon request by the ~~Parole Commission~~ Post-Release Supervision and Parole
21 Commission, the county directors of social services shall assist in the supervision of
22 parolees and shall prepare and submit to the ~~Parole Commission~~ Post-Release
23 Supervision and Parole Commission case histories or other information in connection
24 with any case under consideration for parole or some form of executive clemency."

25 Sec. 48. G.S. 148-57 reads as rewritten:

26 "**§ 148-57. Rules and regulations for parole consideration.**

27 The ~~Parole Commission~~ Post-Release Supervision and Parole Commission is hereby
28 authorized and empowered to set up and establish rules and regulations in accordance
29 with which prisoners eligible for parole consideration may have their cases reviewed
30 and by which such proceedings may be initiated and considered. That the rules and
31 regulations shall include but not be limited to, a plan whereby the ~~Parole Commission~~
32 Post-Release Supervision and Parole Commission of a prisoner to a plan approved by
33 the Secretary of the Department of Correction."

34 Sec. 49. G.S. 148-57.1 reads as rewritten:

35 "**§ 148-57.1. Restitution as a condition of parole or post-release supervision.**

36 (a) Repealed by Session Laws 1985, c. 474, s. 5.

37 (b) As a rehabilitative measure, the ~~Parole Commission~~ Post-Release Supervision
38 and Parole Commission is authorized to require a prisoner to whom parole or post-
39 release supervision is granted to make restitution or reparation to an aggrieved party as a
40 condition of parole or post-release supervision when the sentencing court recommends
41 that restitution or reparation to an aggrieved party be made a condition of any parole or
42 post-release supervision granted the defendant. When imposing restitution as a
43 condition and setting up a payment schedule for the restitution, the ~~Parole Commission~~
44 Post-Release Supervision and Parole Commission shall take into consideration the

1 resources of the defendant, including all real and personal property owned by the
2 defendant and the income derived from such property, his ability to earn, and his
3 obligation to support dependents. The ~~Parole Commission-Post-Release Supervision~~
4 and Parole Commission shall not be bound by such recommendation, but if it elects not
5 to implement the recommendation, it shall state in writing the reasons therefor, and shall
6 forward the same to the sentencing court.

7 (c) When an active sentence is imposed, the court shall consider whether, as a
8 rehabilitative measure, it should recommend to the ~~Parole Commission-Post-Release~~
9 Supervision and Parole Commission that restitution or reparation by the defendant be
10 made a condition of any parole or post-release supervision granted the defendant. If the
11 court determines that restitution or reparation should not be recommended, it shall so
12 indicate on the commitment. If, however, the court determines that restitution or
13 reparation should be recommended, the court shall make its recommendation a part of
14 the order committing the defendant to custody. The recommendation shall be in
15 accordance with the applicable provisions of G.S. 15A-1343(d). The Administrative
16 Office of the Courts shall prepare and distribute forms which provide ample space to
17 make restitution or reparation recommendations incident to commitments, which forms
18 shall be conveniently structured to enable the sentencing court to make its
19 recommendation.

20 If the offense is one in which there is evidence of physical, mental or sexual abuse of
21 a minor, the court may order, as a condition of parole or post-release supervision, that
22 the defendant pay the cost of any rehabilitative treatment for the minor.

23 (d) The ~~Parole Commission-Post-Release Supervision and Parole Commission~~
24 shall establish rules and regulations to implement this section, which shall include
25 adequate notice to the prisoner that the payment of restitution or reparation by the
26 prisoner is being considered as a condition of any parole or post-release supervision
27 granted the prisoner, and opportunity for the prisoner to be heard. Such rules and
28 regulations shall also provide additional methods whereby facts may be obtained to
29 supplement the recommendation of the sentencing court."

30 Sec. 50. G.S. 148-59 reads as rewritten:

31 "**§ 148-59. Duties of clerks of superior courts as to commitments; statements filed**
32 **with Department of Correction.**

33 The several clerks of the superior courts shall attach to the commitment of each
34 prisoner sentenced in such courts a statement furnishing such information as the ~~Parole~~
35 Commission-Post-Release Supervision and Parole Commission shall by regulations
36 prescribe, which information shall contain, among other things, the following:

- 37 (1) The court in which the prisoner was tried;
- 38 (2) The name of the prisoner and of all codefendants;
- 39 (3) The date or session when the prisoner was tried;
- 40 (4) The offense with which the prisoner was charged and the offense for
41 which convicted;
- 42 (5) The judgment of the court and the date of the beginning of the
43 sentence;
- 44 (6) The name and address of the presiding judge;

- 1 (7) The name and address of the prosecuting solicitor;
 2 (8) The name and address of private prosecuting attorney, if any;
 3 (9) The name and address of the arresting officer; and
 4 (10) All available information of the previous criminal record of the
 5 prisoner.

6 The prison authorities receiving the prisoner for the beginning of the service of
 7 sentence shall detach from the commitment the statement furnishing such information
 8 and forward it to the Department of Correction, together with any additional
 9 information in the possession of such prison authorities relating to the previous criminal
 10 record of such prisoner, and the information thus furnished shall constitute the
 11 foundation and file of the prisoner's case. Forms for furnishing the information required
 12 by this section shall, upon request, be furnished to the said clerks by the State
 13 Department of Correction without charge."

14 Sec. 51. G.S. 148-60.1 reads as rewritten:

15 "**§ 148-60.1. Allowances for paroled prisoner and prisoner on post-release**
 16 **supervision.**

17 Upon the release of any prisoner upon parole or post-release supervision, the
 18 superintendent or warden of the institution shall provide the prisoner with suitable
 19 clothing and, if needed, an amount of money sufficient to purchase transportation to the
 20 place within the State where the prisoner is to reside. The ~~Parole Commission Post-~~
 21 ~~Release Supervision and Parole Commission~~ may, in its discretion, provide that the
 22 prisoner shall upon his release on parole or post-release supervision receive a sum of
 23 money of at least forty-five dollars (\$45.00)."

24 Sec. 52. G.S. 148-62.1 reads as rewritten:

25 "**§ 148-62.1. ~~Entitlement of indigent parolee to counsel, in discretion of Board of~~**
 26 **~~Paroles, at revocation hearings. Entitlement of indigent parolee and post-~~**
 27 **~~release supervisee to counsel, in discretion of Post-Release Supervision~~**
 28 **~~and Parole Commission.~~**

29 Any parolee or post-release supervisee who is an indigent under the terms of G.S.
 30 7A-450(a) may be determined entitled, in the discretion of the ~~North Carolina Board~~
 31 ~~of Paroles~~ Post-Release Supervision and Parole Commission, to the services of counsel
 32 at State expense at a parole revocation hearing at which either:

- 33 (1) The parolee or post-release supervisee claims not to have committed
 34 the alleged violation of the parole or post-release supervision
 35 conditions; or
 36 (2) The parolee or post-release supervisee claims there are substantial
 37 reasons which justified or mitigated the violation and make revocation
 38 inappropriate, even if the violation is a matter of public record or is
 39 uncontested, and that the reasons are complex or otherwise difficult to
 40 develop or present; or
 41 (3) The parolee or post-release supervisee is incapable of speaking
 42 effectively for himself; and where the ~~Board Commission~~ feels, on a
 43 case by case basis, that such appointment in accordance with either (1),
 44 (2) or (3) above is necessary for fundamental fairness."

1 Sec. 53. G.S. 148-63 reads as rewritten:

2 **"§ 148-63. Arrest powers of police officers.**

3 Any officer who is authorized to make arrests of fugitives from justice shall have
4 full authority and power to arrest any parolee whose parole has been revoked or any
5 post-release supervisee who has been revoked."

6 Sec. 54. G.S. 148-64 reads as rewritten:

7 **"§ 148-64. Cooperation of prison and parole officials and employees.**

8 The officials and employees of the Department of Correction and the [~~Parole~~
9 ~~Commission~~]Post-Release Supervision and Parole Commission shall at all times
10 cooperate with and furnish each other such information and assistance as will promote
11 the purposes of this Chapter and the purposes for which these agencies were established.
12 The ~~Parole-Commission~~ shall have free access to all prisoners."

13 Sec. 55. G.S. 148-65.3 reads as rewritten:

14 **"§ 148-65.3. North Carolina sentence to be served in another jurisdiction.**

15 The ~~Parole-Commission~~Post-Release Supervision and Parole Commission, with the
16 concurrence of the Secretary of Correction, may direct that the balance of any sentence
17 imposed by the courts of this State shall be served concurrently with a sentence or
18 sentences in another state or federal institution, and may effect a transfer of custody of
19 such individual to the other jurisdiction for such purpose. In the event the individual's
20 sentence liability in the other jurisdiction terminates prior to the expiration of his North
21 Carolina sentence, the individual shall be either paroled (if eligible) or returned to the
22 prison department of this State, in the discretion of the ~~Parole-Commission~~Post-Release
23 Supervision and Parole Commission."

24 Sec. 56. This act becomes effective January 1, 1995, and applies only to
25 offenses occurring on or after that date. Prosecutions for, or sentences based on,
26 offenses occurring before the effective date of this act are not abated or affected by the
27 repeal or amendment in this act of any statute, and the statutes that would be applicable
28 to those prosecutions or sentences but for the provisions of this act remain applicable to
29 those prosecutions or sentences.