

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 277*
Committee Substitute Favorable 5/24/93

Short Title: Structured Sentencing-2.

(Public)

Sponsors:

Referred to:

February 25, 1993

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

The General Assembly of North Carolina enacts:

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

"ARTICLE 81B.

"STRUCTURED SENTENCING OF PERSONS CONVICTED OF CRIMES.

"PART 1. GENERAL PROVISIONS.

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

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

"§ 15A-1340.11. Definitions.

The following definitions apply to this Article:

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

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

1 social skills training, or employment training, conducted at the
2 residential facility or at other specified locations.

3 **"§ 15A-1340.12. Purposes of sentencing.**

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

9 **"PART 2. FELONY SENTENCING.**

10 **"§ 15A-1340.13. Procedure and incidents of sentence of imprisonment for felonies.**

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

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

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

27 (d) Service of Minimum Required; Earned Time Authorization. – An offender
28 sentenced to a sentence of imprisonment that is activated must serve the minimum term
29 imposed. The maximum term may be reduced to, but not below, the minimum term by
30 earned time credits awarded to an offender by the Department of Correction or
31 custodian of the local confinement facility, pursuant to rules adopted in accordance with
32 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 may 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 must 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 **"§ 15A-1340.14. Prior record level for felony sentencing.**

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

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

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

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

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

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

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

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

20 (7) If the offense was committed while the offender was on probation or
21 parole, or while the offender was serving a sentence of imprisonment,
22 or while the offender was on escape from a correctional institution
23 while serving a sentence of imprisonment, 1 point.

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

25 (1) Level I – 0 points.

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

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

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

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

30 (6) Level VI – At least 19 points.

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

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

38 (e) Classification of Prior Convictions From Other Jurisdictions. – Except as
39 otherwise provided in this subsection, a conviction occurring in a jurisdiction other than
40 North Carolina is classified as a Class I felony if the jurisdiction in which the offense
41 occurred classifies the offense as a felony, or is classified as a misdemeanor if the
42 jurisdiction in which the offense occurred classifies the offense as a misdemeanor. If
43 the offender proves by the preponderance of the evidence that an offense classified as a
44 felony in the other jurisdiction is substantially similar to an offense that is a

1 misdemeanor in North Carolina, the conviction is treated as a misdemeanor for
2 assigning prior record level points. If the State proves by the preponderance of the
3 evidence that an offense is substantially similar to an offense in North Carolina
4 classified higher than a Class I felony, the conviction is treated as the higher class of
5 felony for assigning prior record level points.

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

7 (1) Stipulation of the parties;

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

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

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

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

31 **"§ 15A-1340.15. Multiple convictions.**

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

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

42 **"§ 15A-1340.16. Aggravated and mitigated sentences.**

43 (a) Generally, Burden of Proof. – The court shall consider evidence of
44 aggravating or mitigating factors present in the offense which make an aggravated or

1 mitigated sentence appropriate, but the decision to depart from the presumptive range is
2 in the discretion of the court. The State bears the burden of proving by a preponderance
3 of the evidence that an aggravating factor exists and the offender bears the burden of
4 proving by a preponderance of the evidence that a mitigating factor exists.

5 (b) When Aggravated or Mitigated Sentence Allowed. – If the court finds that
6 aggravating or mitigating factors exist, it may depart from the presumptive range of
7 sentences specified in G.S. 15A-1340.17(c)(2). If the court finds that aggravating
8 factors are present and are sufficient to outweigh any mitigating factors that are present,
9 it may impose a sentence that is permitted by the aggravated range described in G.S.
10 15A-1340.17(c)(4). If the court finds that mitigating factors are present and are
11 sufficient to outweigh any aggravating factors that are present, it may impose a sentence
12 that is permitted by the mitigated range described in G.S. 15A-1340.17(c)(3).

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

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

- 20 (1) The defendant induced others to participate in the commission of the
21 offense or occupied a position of leadership or dominance of other
22 participants.
- 23 (2) The defendant joined with more than one other person in committing
24 the offense and was not charged with committing a conspiracy.
- 25 (3) The offense was committed for the purpose of avoiding or preventing a
26 lawful arrest or effecting an escape from custody.
- 27 (4) The defendant was hired or paid to commit the offense.
- 28 (5) The offense was committed to disrupt or hinder the lawful exercise of
29 any governmental function or the enforcement of laws.
- 30 (6) The offense was committed against a present or former: law
31 enforcement officer, employee of the Department of Correction, jailer,
32 fireman, emergency medical technician, ambulance attendant, justice
33 or judge, clerk or assistant or deputy clerk of court, magistrate,
34 prosecutor, juror, or witness against the defendant, while engaged in
35 the performance of his official duties or because of the exercise of his
36 official duties.
- 37 (7) The offense was especially heinous, atrocious, or cruel.
- 38 (8) The defendant knowingly created a great risk of death to more than
39 one person by means of a weapon or device which would normally be
40 hazardous to the lives of more than one person.
- 41 (9) The defendant held public office at the time of the offense and the
42 offense related to the conduct of the office.
- 43 (10) The defendant was armed with or used a deadly weapon at the time of
44 the crime.

- 1 (11) The victim was very young, or very old, or mentally or physically
2 infirm.
- 3 (12) The defendant committed the offense while on pretrial release on
4 another charge.
- 5 (13) The defendant involved a person under the age of 16 in the
6 commission of the crime.
- 7 (14) The offense involved an attempted or actual taking of property of great
8 monetary value or damage causing great monetary loss, or the offense
9 involved an unusually large quantity of contraband.
- 10 (15) The defendant took advantage of a position of trust or confidence to
11 commit the offense.
- 12 (16) The offense involved the sale or delivery of a controlled substance to a
13 minor.
- 14 (17) The offense for which the defendant stands convicted was committed
15 against a victim because of the victim's race, color, religion,
16 nationality, or country of origin.
- 17 (18) The defendant has been previously adjudicated delinquent in juvenile
18 court.
- 19 (19) The serious injury inflicted upon the victim is permanent and
20 debilitating.
- 21 (20) Any other aggravating factor reasonably related to the purposes of
22 sentencing.

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

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

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

- 29 (1) The defendant committed the offense under duress, coercion, threat, or
30 compulsion which was insufficient to constitute a defense but
31 significantly reduced his culpability.
- 32 (2) The defendant was a passive participant or played a minor role in the
33 commission of the offense.
- 34 (3) The defendant was suffering from a mental or physical condition that
35 was insufficient to constitute a defense but significantly reduced his
36 culpability for the offense.
- 37 (4) The defendant's age, immaturity, or his limited mental capacity at the
38 time of commission of the offense significantly reduced his culpability
39 for the offense.
- 40 (5) The defendant has made substantial or full restitution to the victim.
- 41 (6) The victim was more than 16 years of age and was a voluntary
42 participant in the defendant's conduct or consented to it.

- 1 (7) The defendant aided in the apprehension of another felon or testified
2 truthfully on behalf of the prosecution in another prosecution of a
3 felony.
- 4 (8) The defendant acted under strong provocation, or the relationship
5 between the defendant and the victim was otherwise extenuating.
- 6 (9) The defendant could not reasonably foresee that his conduct would
7 cause or threaten serious bodily harm or fear, or the defendant
8 exercised caution to avoid such consequences.
- 9 (10) The defendant reasonably believed that his conduct was legal.
- 10 (11) Prior to arrest or at an early stage of the criminal process, the
11 defendant voluntarily acknowledged wrongdoing in connection with
12 the offense to a law enforcement officer.
- 13 (12) The defendant has been a person of good character or has had a good
14 reputation in the community in which he lives.
- 15 (13) The defendant is a minor and has reliable supervision available.
- 16 (14) The defendant has been honorably discharged from the United States
17 armed services.
- 18 (15) The defendant has accepted responsibility for his criminal conduct.
- 19 (16) The defendant has successfully completed a drug treatment program or
20 an alcohol treatment program.
- 21 (17) The defendant supports his or her family.
- 22 (18) The defendant has a support system in the community.
- 23 (19) The defendant is gainfully employed.
- 24 (20) The defendant has a good treatment prognosis and a workable
25 treatment plan is available.
- 26 (21) Any other mitigating factor reasonably related to the purposes of
27 sentences.

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

32 **"§ 15A-1340.17. Punishment limits for each class of offense and prior record level.**

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

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

41 (c) Punishments for Each Class of Offense and Prior Record Level; Punishment
42 Chart Described. – The authorized punishment for each class of offense and prior record
43 level is as specified in the chart below. Prior record levels are indicated by the Roman
44 numerals placed horizontally on the top of the chart. Classes of offense are indicated by

1 the letters placed vertically on the left side of the chart. Each cell on the chart contains
 2 the following components:

- 3 (1) A sentence disposition or dispositions: 'C' indicates that a community
 4 punishment is authorized; 'I' indicates that an intermediate punishment
 5 is authorized; and 'A' indicates that an active punishment is authorized.
- 6 (2) A presumptive range of minimum durations, if the sentence of
 7 imprisonment is neither aggravated or mitigated; any minimum term of
 8 imprisonment in that range is permitted unless the court finds pursuant
 9 to G.S. 15A-1340.16 that an aggravated or mitigated sentence is
 10 appropriate. The presumptive range is the middle of the three ranges
 11 in the cell.
- 12 (3) A mitigated range of minimum durations if the court finds pursuant to
 13 G.S. 15A-1340.16 that a mitigated sentence of imprisonment is
 14 justified; in such a case, any minimum term of imprisonment in the
 15 mitigated range is permitted. The mitigated range is the lower of the
 16 three ranges in the cell.
- 17 (4) An aggravated range of minimum durations if the court finds pursuant
 18 to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is
 19 justified; in such a case, any minimum term of imprisonment in the
 20 aggravated range is permitted. The aggravated range is the higher of
 21 the three ranges in the cell.

22
 23 **PRIOR RECORD LEVEL**

24
 25 I II III IV V VI
 26 0 Pts 1-4 Pts 5-8 Pts 9-14 Pts 15-18 Pts 19+ Pts

27
 28 **A Life Imprisonment or Death as Established by Statute**

29
 30
 31 A A A A A A DISPOSITION
 32 135-169 163-204 190-238 216-270 243-304 270-338
 33 Aggravated
 34 B 108-135 130-163 152-190 173-216 194-243 216-270 PRESUMPTIVE
 35 81-108 98-130 114-152 130-173 146-194 162-216
 36 Mitigated

37
 38 A A A A A A DISPOSITION
 39 63-79 86-108 100-125 115-144 130-162 145-181 Aggravated
 40 C 50-63 69-86 80-100 92-115 104-130 116-145 PRESUMPTIVE
 41 38-50 52-69 60-80 69-92 78-104 87-116 Mitigated

42
 43 A A A A A A DISPOSITION
 44 55-69 66-82 89-111 101-126 115-144 126-158 Aggravated

1 D 44-55 53-66 71-89 81-101 92-115 101-126 PRESUMPTIVE
 2 33-44 40-53 53-71 61-81 69-92 76-101 Mitigated

3
 4 A/I A/IA A A A DISPOSITION
 5 25-31 29-36 34-42 46-58 53-66 59-74 Aggravated

6 E 20-25 23-29 27-34 37-46 42-53 47-59 PRESUMPTIVE
 7 15-20 17-23 20-27 28-37 32-42 35-47 Mitigated

8
 9 I/A I/AA/I A A A DISPOSITION
 10 16-20 19-24 21-26 25-31 34-42 39-49 Aggravated

11 F 13-16 15-19 17-21 20-25 27-34 31-39 PRESUMPTIVE
 12 10-13 11-15 13-17 15-20 20-27 23-31 Mitigated

13
 14 I/A I/AA/I A/I A A DISPOSITION
 15 13-16 15-19 16-20 20-25 21-26 29-36 Aggravated

16 G 10-13 12-15 13-16 16-20 17-21 23-29 PRESUMPTIVE
 17 8-10 9-12 10-13 12-16 13-17 17-23 Mitigated

18
 19 C/I I I/A I/A A/I A DISPOSITION
 20 6-8 8-10 10-12 11-14 15-19 20-25 Aggravated

21 H 5-6 6-8 8-10 9-11 12-15 16-20 PRESUMPTIVE
 22 4-5 4-6 6-8 7-9 9-12 12-16 Mitigated

23
 24 C C/II I/A I/A A/I DISPOSITION
 25 6-8 6-8 6-8 8-10 9-11 10-12 Aggravated

26 I 4-6 4-6 5-6 6-8 7-9 8-10 PRESUMPTIVE
 27 3-4 3-4 4-5 4-6 5-7 6-8 Mitigated

28 (d) Maximum Sentences Specified for Class F through Class I Felonies. – Unless
 29 provided otherwise in a statute establishing a punishment for a specific crime, for each
 30 minimum term of imprisonment in the chart in subsection (c) of this section, expressed
 31 in months, the corresponding maximum term of imprisonment, also expressed in
 32 months, is as specified in the table below for Class F through Class I felonies. The first
 33 figure in each cell in the table is the minimum term and the second is the maximum
 34 term.

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

43 (e) Maximum Sentences Specified for Class B through Class E Felonies. –
 44 Unless provided otherwise in a statute establishing a punishment for a specific crime,

1 for each minimum term of imprisonment in the chart in subsection (c) of this section,
 2 expressed in months, the corresponding maximum term of imprisonment, also expressed
 3 in months, is as specified in the table below for Class B through Class E felonies. The
 4 first figure in each cell of the table is the minimum term and the second is the maximum
 5 term.

6								
7	<u>15-20</u>	<u>16-21</u>	<u>17-23</u>	<u>18-24</u>	<u>19-25</u>	<u>20-26</u>	<u>21-28</u>	<u>22-29</u>
8	<u>23-30</u>	<u>24-32</u>	<u>25-33</u>	<u>26-34</u>	<u>27-36</u>	<u>28-37</u>	<u>29-38</u>	<u>30-39</u>
9	<u>31-41</u>	<u>32-42</u>	<u>33-43</u>	<u>34-45</u>	<u>35-46</u>	<u>36-47</u>	<u>37-49</u>	<u>38-50</u>
10	<u>39-51</u>	<u>40-52</u>	<u>41-54</u>	<u>42-55</u>	<u>43-56</u>	<u>44-58</u>	<u>45-59</u>	<u>46-60</u>
11	<u>47-62</u>	<u>48-63</u>	<u>49-64</u>	<u>50-65</u>	<u>51-67</u>	<u>52-68</u>	<u>53-69</u>	<u>54-71</u>
12	<u>55-72</u>	<u>56-73</u>	<u>57-75</u>	<u>58-76</u>	<u>59-77</u>	<u>60-78</u>	<u>61-80</u>	<u>62-81</u>
13	<u>63-82</u>	<u>64-84</u>	<u>65-85</u>	<u>66-86</u>	<u>67-88</u>	<u>68-89</u>	<u>69-90</u>	<u>70-91</u>
14	<u>71-93</u>	<u>72-94</u>	<u>73-95</u>	<u>74-97</u>	<u>75-98</u>	<u>76-99</u>	<u>77-101</u>	<u>78-102</u>
15	<u>79-103</u>	<u>80-104</u>	<u>81-106</u>	<u>82-107</u>	<u>83-108</u>	<u>84-110</u>	<u>85-111</u>	<u>86-112</u>
16	<u>87-114</u>	<u>88-115</u>	<u>89-116</u>	<u>90-117</u>	<u>91-119</u>	<u>92-120</u>	<u>93-121</u>	<u>94-123</u>
17	<u>95-124</u>	<u>96-125</u>	<u>97-127</u>	<u>98-128</u>	<u>99-129</u>	<u>100-130</u>	<u>101-132</u>	<u>102-133</u>
18	<u>103-134</u>	<u>104-136</u>	<u>105-137</u>	<u>106-138</u>	<u>107-140</u>	<u>108-141</u>	<u>109-142</u>	<u>110-143</u>
19	<u>111-145</u>	<u>112-146</u>	<u>113-147</u>	<u>114-149</u>	<u>115-150</u>	<u>116-151</u>	<u>117-153</u>	<u>118-154</u>
20	<u>119-155</u>	<u>120-156</u>	<u>121-158</u>	<u>122-159</u>	<u>123-160</u>	<u>124-162</u>	<u>125-163</u>	<u>126-164</u>
21	<u>127-166</u>	<u>128-167</u>	<u>129-168</u>	<u>130-169</u>	<u>131-171</u>	<u>132-172</u>	<u>133-173</u>	<u>134-175</u>
22	<u>135-176</u>	<u>136-177</u>	<u>137-179</u>	<u>138-180</u>	<u>139-181</u>	<u>140-182</u>	<u>141-184</u>	<u>142-185</u>
23	<u>143-186</u>	<u>144-188</u>	<u>145-189</u>	<u>146-190</u>	<u>147-192</u>	<u>148-193</u>	<u>149-194</u>	<u>150-195</u>
24	<u>151-197</u>	<u>152-198</u>	<u>153-199</u>	<u>154-201</u>	<u>155-202</u>	<u>156-203</u>	<u>157-205</u>	<u>158-206</u>
25	<u>159-207</u>	<u>160-208</u>	<u>161-210</u>	<u>162-211</u>	<u>163-212</u>	<u>164-214</u>	<u>165-215</u>	<u>166-216</u>
26	<u>167-218</u>	<u>168-219</u>	<u>169-220</u>	<u>170-221</u>	<u>171-223</u>	<u>172-224</u>	<u>173-225</u>	<u>174-227</u>
27	<u>175-228</u>	<u>176-229</u>	<u>177-231</u>	<u>178-232</u>	<u>179-233</u>	<u>180-234</u>	<u>181-236</u>	<u>182-237</u>
28	<u>183-238</u>	<u>184-240</u>	<u>185-241</u>	<u>186-242</u>	<u>187-244</u>	<u>188-245</u>	<u>189-246</u>	<u>190-247</u>
29	<u>191-249</u>	<u>192-250</u>	<u>193-251</u>	<u>194-253</u>	<u>195-254</u>	<u>196-255</u>	<u>197-257</u>	<u>198-258</u>
30	<u>199-259</u>	<u>200-260</u>	<u>201-262</u>	<u>202-263</u>	<u>203-264</u>	<u>204-266</u>	<u>205-267</u>	<u>206-268</u>
31	<u>207-270</u>	<u>208-271</u>	<u>209-272</u>	<u>210-273</u>	<u>211-275</u>	<u>212-276</u>	<u>213-277</u>	<u>214-279</u>
32	<u>215-280</u>	<u>216-281</u>	<u>217-283</u>	<u>218-284</u>	<u>219-285</u>	<u>220-286</u>	<u>221-288</u>	<u>222-289</u>
33	<u>223-290</u>	<u>224-292</u>	<u>225-293</u>	<u>226-294</u>	<u>227-296</u>	<u>228-297</u>	<u>229-298</u>	<u>230-299</u>
34	<u>231-301</u>	<u>232-302</u>	<u>233-303</u>	<u>234-305</u>	<u>235-306</u>	<u>236-307</u>	<u>237-309</u>	<u>238-310</u>
35	<u>239-311</u>	<u>240-312</u>	<u>241-314</u>	<u>242-315</u>	<u>243-316</u>	<u>244-318</u>	<u>245-319</u>	<u>246-320</u>
36	<u>247-322</u>	<u>248-323</u>	<u>249-324</u>	<u>250-325</u>	<u>251-327</u>	<u>252-328</u>	<u>253-329</u>	<u>254-331</u>
37	<u>255-332</u>	<u>256-333</u>	<u>257-335</u>	<u>258-336</u>	<u>259-337</u>	<u>260-338</u>	<u>261-340</u>	<u>262-341</u>
38	<u>263-342</u>	<u>264-344</u>	<u>265-345</u>	<u>266-346</u>	<u>267-348</u>	<u>268-349</u>	<u>269-350</u>	<u>270-351</u>
39	<u>271-353</u>	<u>272-354</u>	<u>273-355</u>	<u>274-357</u>	<u>275-358</u>	<u>276-359</u>	<u>277-361</u>	<u>278-362</u>
40	<u>279-363</u>	<u>280-364</u>	<u>281-366</u>	<u>282-367</u>	<u>283-368</u>	<u>284-370</u>	<u>285-371</u>	<u>286-372</u>
41	<u>287-374</u>	<u>288-375</u>	<u>289-376</u>	<u>290-377</u>	<u>291-379</u>	<u>292-380</u>	<u>293-381</u>	<u>294-383</u>
42	<u>295-384</u>	<u>296-385</u>	<u>297-387</u>	<u>298-388</u>	<u>299-389</u>	<u>300-390</u>	<u>301-392</u>	<u>302-393</u>
43	<u>303-394</u>	<u>304-396</u>	<u>305-397</u>	<u>306-398</u>	<u>307-400</u>	<u>308-401</u>	<u>309-402</u>	<u>310-403</u>
44	<u>311-405</u>	<u>312-406</u>	<u>313-407</u>	<u>314-409</u>	<u>315-410</u>	<u>316-411</u>	<u>317-413</u>	<u>318-414</u>

1 319-415 320-416 321-418 322-419 323-420 324-422 325-423 326-424
2 327-426 328-427 329-428 330-429 331-431 332-432 333-433 334-435
3 335-436 336-437 337-439 338-440 339-441

4
5 **"PART 3. MISDEMEANOR SENTENCING.**

6 **"§ 15A-1340.20. Procedure and incidents of sentence of imprisonment for**
7 **misdemeanors.**

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

10 (b) Procedure Generally; Term of Imprisonment. – A sentence imposed for a
11 misdemeanor must contain a sentence disposition specified for the class of offense and
12 prior conviction level, and any sentence of imprisonment must be within the range
13 specified for the class of offense and prior conviction level, unless applicable statutes
14 require otherwise. The kinds of sentence dispositions are active punishment,
15 intermediate punishment, and community punishment. Except for the work and earned
16 time credits authorized by G.S. 162-60, or earned time credits authorized by G.S. 15A-
17 1355(c), if applicable, an offender whose sentence of imprisonment is activated must
18 serve each day of the term imposed.

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

22 (d) Earned Time Authorization. – An offender sentenced to a term of
23 imprisonment that is activated is eligible to receive earned time credit for misdemeanant
24 offenders awarded by the Department of Correction or custodian of a local confinement
25 facility, pursuant to rules adopted in accordance with law. These rules may not award
26 misdemeanant offenders more than four days of earned time credit per month of
27 incarceration.

28 **"§ 15A-1340.21. Prior conviction level for misdemeanor sentencing.**

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

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

33 (1) Level I – 0 prior convictions.

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

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

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

37 (1) Stipulation of the parties;

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

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

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

43 The State bears the burden of proving, by a preponderance of the evidence, that a
44 prior conviction exists and that the offender before the court is the same person as the

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

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

17 **"§ 15A-1340.22. Multiple convictions.**

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

24 (b) Consolidation of Sentences. – If an offender is convicted of more than one
25 offense at the same session of court, the court may consolidate the offenses for
26 judgment and impose a single judgment for the consolidated offenses. Any sentence
27 imposed must be consistent with the appropriate prior conviction level of the most
28 serious offense.

29 **"§ 15A-1340.23. Punishment limits for each class of offense and prior conviction
30 level.**

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

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

41 (c) Punishment for Each Class of Offense and Prior Conviction Level;
42 Punishment Chart Described. – Unless otherwise provided for a specific offense, the
43 authorized punishment for each class of offense and prior conviction level is as
44 specified in the chart below. Prior conviction levels are indicated by the Roman

numerals placed horizontally on the top of the chart. Classes of offenses are indicated by the Arabic numbers placed vertically on the left side of the chart. Each grid on the chart contains the following components:

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

PRIOR CONVICTION LEVELS

MISDEMEANOR

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

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

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

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

- (1) ~~Of a Class J felony if the felony he conspired to commit was a Class H, I, or J felony;~~
- (2) ~~Of a Class H felony if the felony he conspired to commit was any other class of felony.~~

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

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

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

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

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

7 "**§ 14-3. Punishment of misdemeanors, infamous offenses, offenses committed in**
 8 **secrecy and malice, or with deceit and intent to defraud, or with ethnic**
 9 **animosity.**

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

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

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

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

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

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

32 (c) If any Class 2 or Class 3 misdemeanor offense with punishment less than the
 33 punishment for a general misdemeanor is committed because of the victim's race, color,
 34 religion, nationality, or country of origin, the offender shall be guilty of a general-Class
 35 1 misdemeanor. If any general-Class 1 misdemeanor offense is committed because of
 36 the victim's race, color, religion, nationality, or country of origin, the offender shall be
 37 guilty of a Class H-I felony."

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

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

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

2 "**§ 14-7.6. Sentencing of habitual felons.**

3 When an habitual felon ~~as defined in this Article~~ shall commit any felony classified
4 as a Class E, F, G, H, or I felony under the laws of the State of North Carolina, he must,
5 upon conviction or plea of guilty under indictment as herein provided, be punished as a
6 Class D felon. In determining the prior record level, convictions used to establish a
7 person's status as a habitual felon may not be used. For purposes of this section,
8 habitual felon is defined as in G.S. 14-7.1, except that only one of the three felony
9 convictions can be for a Class H, I, or J felony. (except where the death penalty or a
10 sentence of life imprisonment is imposed) be sentenced as a Class C felon.
11 ~~Notwithstanding any other provision of law, a person sentenced under this Article shall~~
12 ~~serve a term of not less than seven years in prison, excluding gain time granted under~~
13 ~~G.S. 148-13. A person sentenced under this Article shall receive a sentence of at least~~
14 ~~14 years in the State's prison and shall be entitled to credit for good behavior under G.S.~~
15 ~~15A-1340.7. The sentencing judge may not suspend the sentence and may not place the~~
16 ~~person sentenced on probation.—Sentences imposed under this Article shall run~~
17 ~~consecutively with and shall commence at the expiration of any sentence being served~~
18 ~~by the person sentenced hereunder."~~

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

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

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

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

41 "**§ 15A-1301. Order of commitment to imprisonment when not otherwise specified.**

42 When a judicial official orders that a defendant be imprisoned he must issue an
43 appropriate written commitment order. When the commitment is to a sentence of
44 imprisonment, the commitment must include the identification and class of the offense

1 or offenses for which the defendant was convicted and, if the sentences are consecutive,
2 the maximum sentence allowed by law upon conviction of each offense for the
3 punishment range used to impose the sentence for the class of offense and prior record
4 or conviction level, and, if the sentences are concurrent or consolidated, the longest of
5 the maximum sentences allowed by law for the classes of offense and prior record or
6 conviction levels upon conviction of any of the offenses."

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

8 "**§ 15A-1331. Authorized sentences; conviction.**

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

- 15 (1) ~~Probation as authorized by Article 82, Probation, or a term of~~
16 ~~imprisonment as authorized by Article 83, Imprisonment; or~~
17 (2) ~~A fine as authorized by Article 84, Fines; or~~
18 (3) ~~Other punishment authorized or required by law.~~

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

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

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

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

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

1 **"§ 15A-1341. Probation generally.**

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

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

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

- 28 (1) Prosecution has been deferred by the prosecutor pursuant to written
29 agreement with the defendant, with the approval of the court, for the
30 purpose of allowing the defendant to demonstrate his good conduct.
31 (2) Each known victim of the crime has been notified of the motion for
32 probation by subpoena or certified mail and has been given an
33 opportunity to be heard.
34 (3) The defendant has not been convicted of any felony or of any
35 misdemeanor involving moral turpitude.
36 (4) The defendant has not previously been placed on probation and so
37 states under oath.
38 (5) The defendant is unlikely to commit another offense other than a Class
39 3 misdemeanor.

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

43 (c) Election to Serve Sentence or Be Tried on Charges. – Any person placed on
44 probation may at any time during the probationary period elect to serve his suspended

1 sentence of imprisonment in lieu of the remainder of his probation. Any person placed
2 on probation upon deferral of prosecution may at any time during the probationary
3 period elect to be tried upon the charges deferred in lieu of remaining on probation."

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

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

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

11 (2) Attend or reside in a facility providing rehabilitation, counseling,
12 treatment, social skills, or employment training, instruction, recreation,
13 or residence for persons on probation.

14 (2a) Submit to a period of imprisonment in a facility for youthful offenders
15 for a minimum of 90 days or a maximum of 120 days under special
16 probation, reference G.S. 15A-1351(a) or G.S. 15A-1344(e), and abide
17 by all rules and regulations as provided in conjunction with the
18 Intensive Motivational Program of Alternative Correctional Treatment
19 (IMPACT), which provides an atmosphere for learning personal
20 confidence, personal responsibility, self-respect, and respect for
21 attitudes and value systems.

22 (3) Submit to imprisonment required for special probation under G.S.
23 15A-1351(a) or G.S. 15A-1344(e).

24 (3a) Remain in one or more specified places for a specified period or
25 periods each day, and wear a device which permits his compliance
26 with the condition to be monitored electronically.

27 (3b) Submit to supervision by officers assigned to the Intensive Probation
28 Program established pursuant to G.S. 143B-262(c), and abide by the
29 rules and regulations adopted for that Program.

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

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

- 1 (6) Perform community or reparation service and pay any fee required by
2 law or ordered by the court for participation in the community or
3 reparation service program.
- 4 (7) Submit at reasonable times to warrantless searches by a probation
5 officer of his person and of his vehicle and premises while he is
6 present, for purposes specified by the court and reasonably related to
7 his probation supervision, but the probationer may not be required to
8 submit to any other search that would otherwise be unlawful.
9 Whenever the warrantless search consists of testing for the presence of
10 illegal drugs, the probationer may also be required to reimburse the
11 Department of Correction for the actual cost of drug screening and
12 drug testing, if the results are positive.
- 13 (8) Not use, possess, or control any illegal drug or controlled substance
14 unless it has been prescribed for him by a licensed physician and is in
15 the original container with the prescription number affixed on it; not
16 knowingly associate with any known or previously convicted users,
17 possessors or sellers of any such illegal drugs or controlled substances;
18 and not knowingly be present at or frequent any place where such
19 illegal drugs or controlled substances are sold, kept, or used.
- 20 (8a) Purchase the least expensive annual statewide license or combination
21 of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3,
22 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to
23 engage lawfully in the specific activity or activities in which the
24 defendant was engaged and which constitute the basis of the offense or
25 offenses of which he was convicted.
- 26 (9) If the offense is one in which there is evidence of physical, mental or
27 sexual abuse of a minor, the court should encourage the minor and the
28 minor's parents or custodians to participate in rehabilitative treatment
29 and may order the defendant to pay the cost of such treatment.
- 30 (10) Satisfy any other conditions determined by the court to be reasonably
31 related to his rehabilitation."

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

33 **"§ 15A-1343.1. Criteria for selection and sentencing to IMPACT.**

34 The criteria for selecting and sentencing youthful offenders to the Intensive
35 Motivational Program of Alternative Correctional Treatment as provided under G.S.
36 15A-1343(b1)(2a) shall be as follows:

- 37 (1) The offender must be between the ages of 16 and 25;
- 38 (2) The offender must be convicted of ~~an offense punishable by a prison~~
39 ~~sentence of one year or more; a Class 1 misdemeanor or a felony.~~
- 40 (3) The offender must submit to a medical evaluation by a physician
41 approved by his probation or parole officer and must be certified by
42 the physician to be medically fit for program participation;
- 43 (4) The offender must not previously have served an active sentence in
44 excess of 120 days for an offense not subject to Article 81B of this

1 Chapter or of 30 days for an offense subject to Article 81B of this
2 Chapter."

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

4 **"§ 15A-1344. Response to violations; alteration and revocation.**

5 (a) Authority to Alter or Revoke. – Except as provided in subsection (b),
6 probation may be reduced, terminated, continued, extended, modified, or revoked by
7 any judge entitled to sit in the court which imposed probation and who is resident or
8 presiding in the district court district as defined in G.S. 7A-133 or superior court district
9 or set of districts as defined in G.S. 7A-41.1, as the case may be, where the sentence of
10 probation was imposed, where the probationer violates probation, or where the
11 probationer resides. The district attorney of the prosecutorial district as defined in G.S.
12 7A-60 in which probation was imposed must be given reasonable notice of any hearing
13 to affect probation substantially.

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

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

36 (d) Extension and Modification; Response to Violations. – At any time prior to the
37 expiration or termination of the probation period, the court may after notice and hearing
38 and for good cause shown extend the period of probation up to the maximum allowed
39 under G.S. 15A-1342(a) and may modify the conditions of probation. The probation
40 period shall be tolled if the probationer shall have pending against him criminal charges
41 in any court of competent jurisdiction, which, upon conviction, could result in
42 revocation proceedings against him for violation of the terms of this probation. The
43 hearing may be held in the absence of the defendant, if he fails to appear for the hearing
44 after a reasonable effort to notify him. If a convicted defendant violates a condition of

1 probation at any time prior to the expiration or termination of the period of probation,
2 the court, in accordance with the provisions of G.S. 15A-1345, may continue him on
3 probation, with or without modifying the conditions, may place the defendant on special
4 probation as provided in subsection (e), or, if continuation, modification, or special
5 probation is not appropriate, may revoke the probation and activate the suspended
6 sentence imposed at the time of initial sentencing, if any, or may order that charges as to
7 which prosecution has been deferred be brought to trial; provided that probation may
8 not be revoked solely for conviction of a ~~misdemeanor unless it is punishable by~~
9 ~~imprisonment for more than 30 days.~~ Class 3 misdemeanor. The court, before
10 activating a sentence to imprisonment established when the defendant was placed on
11 probation, may reduce the ~~sentence.~~ sentence, but the reduction must be consistent with
12 subsection (d1) of this section. A sentence activated upon revocation of probation
13 commences on the day probation is revoked and runs concurrently with any other period
14 of probation, parole, or imprisonment to which the defendant is subject during that
15 period unless the revoking judge specifies that it is to run consecutively with the other
16 period.

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

28 (e) Special Probation in Response to Violation. – When a defendant has violated
29 a condition of probation, the court may modify his probation to place him on special
30 probation as provided in this subsection. In placing him on special probation, the court
31 may continue or modify the conditions of his probation and in addition require that he
32 submit to a period or periods of imprisonment, either continuous or noncontinuous, at
33 whatever time or intervals within the period of probation the court determines. In
34 addition to any other conditions of probation which the court may impose, the court
35 shall impose, when imposing a period or periods of imprisonment as a condition of
36 special probation, the condition that the defendant obey the Rules and Regulations of
37 the Department of Correction governing conduct of inmates, and this condition shall
38 apply to the defendant whether or not the court imposes it as a part of the written order.
39 If imprisonment is for continuous periods, the confinement may be in either the custody
40 of the Department of Correction or a local confinement facility. Noncontinuous periods
41 of imprisonment under special probation may only be served in a designated local
42 confinement or treatment facility. Except for probationary sentences for impaired
43 driving under G.S. 20-138.1, the ~~The~~ total of all periods of confinement imposed as an
44 incident of special probation, but not including an activated suspended sentence, may

1 not exceed six months or one fourth the maximum ~~penalty allowed by law~~ sentence of
2 imprisonment imposed for the offense, whichever is less. For probationary sentences for
3 impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as
4 an incident of special probation, but not including an activated suspended sentence, may
5 not exceed one-fourth the maximum penalty allowed by law. No confinement other
6 than an activated suspended sentence may be required beyond the period of probation or
7 beyond two years of the time the special probation is imposed, whichever comes first.

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

- 10 (1) Before the expiration of the period of probation the State has filed a
11 written motion with the clerk indicating its intent to conduct a
12 revocation hearing; and
13 (2) The court finds that the State has made reasonable effort to notify the
14 probationer and to conduct the hearing earlier."

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

16 "**§ 15A-1351. Sentence of imprisonment; incidents; special probation.**

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

1 probation, but not including an activated suspended sentence, may not exceed one-
2 fourth the maximum penalty allowed by law. In imposing a sentence of special
3 probation, the judge may credit any time spent committed or confined, as a result of the
4 charge, to either the suspended sentence or to the imprisonment required for special
5 probation. The period of probation, including the period of imprisonment required for
6 special probation, may not exceed five years. The court may revoke, modify, or
7 terminate special probation as otherwise provided for probationary sentences.

8 ~~(b) Sentencing of a person convicted of a felony that occurred on or after the~~
9 ~~effective date of Article 81A of this Chapter is subject to that Article; a minimum term~~
10 ~~of imprisonment shall not be imposed on such a person. Sentencing of a person~~
11 ~~convicted of a felony or of a misdemeanor other than impaired driving under G.S. 20-~~
12 ~~138.1 that occurred on or after the effective date of Article 81B is subject to that Article.~~
13 ~~With regard to convicted persons not subject to Article 81A, For persons convicted of~~
14 ~~impaired driving under G.S. 20-138.1, a sentence to imprisonment must impose a~~
15 ~~maximum term and may impose a minimum term. The impaired driving judgment may~~
16 ~~state the minimum term or may state that a term constitutes both the minimum and~~
17 ~~maximum terms. If the impaired driving judgment states no minimum term, the~~
18 ~~defendant becomes eligible for parole in accordance with G.S. 15A-1371(a).~~

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

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

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

29 (f) Work Release. — When sentencing a person convicted of a felony, the sentencing
30 court may recommend that the sentenced offender be granted work release as authorized
31 in G.S. 148-33.1. When sentencing a person convicted of a misdemeanor, the
32 sentencing court may recommend or, with the consent of the person sentenced, order
33 that the sentenced offender be granted work release as authorized in G.S. 148-33.1.

34 (g) Credit. — Credit towards a sentence to imprisonment is as provided in Article
35 19A of Chapter 15 of the General Statutes.

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

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

40 "(c) Earned Time; Credit for Good Behavior for Impaired Drivers. —~~The~~
41 ~~Department of Correction and jailers, as defined by G.S. 15A-1340.2, must give credit~~
42 ~~for good behavior toward service of a prison or jail term imposed for a felony that~~
43 ~~occurred on or after the effective date of Article 81A, as required by G.S. 15A-1340.7.~~
44 ~~The provisions of this subsection do not apply to persons convicted of Class A or Class~~

~~B felonies nor to persons sentenced to a term of special probation under G.S. 15A-1344(e) or G.S. 15A-1351(a). The Department of Correction and jailers may give time credit toward service of other prison or jail terms imposed for a felony or misdemeanor, according to regulations issued by the Secretary of Correction as provided by G.S. 148-13. Persons convicted of felonies or misdemeanors under Article 81B of this Chapter may, consistent with regulations of the Department of Correction, earn credit which may be used to reduce their maximum terms of imprisonment as provided in G.S. 15A-1340.13(d) for felony sentences and in G.S. 15A-1340.20(d) for misdemeanor sentences.~~

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

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

"ARTICLE 84A.

"POST-RELEASE SUPERVISION.

"§ 15A-1370.1. Definitions and administration.

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

- (1) Post-release supervision or supervision. – The time for which a sentenced prisoner is released from prison before the termination of his maximum prison term, controlled by the rules and conditions of this Article. Purposes of post-release supervision include all or any of the following: to monitor and control the prisoner in the community, to assist the prisoner in reintegrating into society, to collect restitution and other court indebtedness from the prisoner, and to continue the prisoner's treatment and/or education.
- (2) Supervisee. – A person released from incarceration and in the custody of the Department of Correction and Post-Release Supervision and Parole Commission on post-release supervision.
- (3) Commission. – The Post-Release Supervision and Parole Commission, whose general authority is described in G.S. 143B-266.
- (4) Minimum imposed term. – The minimum term of imprisonment imposed on an individual prisoner by a court judgment, as described in G.S. 15A-1340.13(c). When a prisoner is serving consecutive imprisonment terms, the minimum imposed term, for purposes of this Article, is the sum of all minimum terms imposed in the court judgment.
- (5) Maximum imposed term. – The maximum term of imprisonment imposed on an individual prisoner by a court judgment, as described in G.S. 15A-1340.13(c). When a prisoner is serving consecutive prison terms, the maximum imposed term, for purposes of this Article, is the sum of all maximum terms imposed in the court judgment.

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

4 **"§ 15A-1370.2. Applicability of Article 84A.**

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

8 **"§ 15A-1370.3. Post-release supervision eligibility and procedure.**

9 (a) A prisoner to whom this Article applies shall be released from prison for
10 post-release supervision on the date equivalent to his maximum imposed prison term
11 less ten percent (10%) of his minimum imposed prison term, less any earned time
12 awarded by the Department of Correction or custodian of a local confinement facility
13 under G.S. 15A-1340(d). If a prisoner has not been awarded any earned time, he shall
14 be released for post-release supervision on the date equivalent to his maximum prison
15 term less ten percent (10%) of his minimum prison term.

16 (b) A prisoner may not refuse post-release supervision.

17 (c) A supervisee's period of post-release supervision shall be for a period of time
18 equivalent to ten percent (10%) of his minimum imposed term. The conditions of post-
19 release supervision are as authorized in G.S. 15A-1370.5.

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

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

28 (f) Termination of Sentence. – When a supervisee completes his period of post-
29 release supervision, the sentence or sentences from which he was placed on post-release
30 supervision are terminated.

31 **"§ 15A-1370.4. Incidents of post-release supervision.**

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

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

37 (c) Effect of Violation. – If the supervisee violates a condition, described in G.S.
38 15A-1370.5, at any time before the termination of the supervision period, the
39 Commission may continue him on the existing supervision, with or without modifying
40 the conditions, or if continuation or modification is not appropriate, may revoke post-
41 release supervision as provided in G.S. 15A-1370.7 and reimprison the supervisee for a
42 term consistent with the following requirements:

- 43 (1) The supervisee will be returned to prison for 90 days, or for the time
44 remaining on his maximum imposed term, whichever is less.

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

4 (3) Pursuant to Article 19A of Chapter 15, the Department of Correction
5 must award a prisoner credit against any term of reimprisonment for
6 all time spent in custody as a result of revocation proceedings under
7 G.S. 15A-1370.7.

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

11 (d) Re-Release After Revocation of Post-Release Supervision. – A prisoner who
12 has been reimprisoned following an initial or second post-release supervision period
13 may again be released on post-release supervision by the Commission subject to the
14 provisions which govern initial release. Upon a third revocation from post-release
15 supervision, a prisoner may be returned to prison for the entire remaining time in his
16 maximum imposed term.

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

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

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

28 "**§ 15A-1370.5. Conditions of post-release supervision.**"

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

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

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

1 (d) Appropriate reintegrative conditions, for which a supervisee may receive
2 earned time credits against the length of his supervision period, and repeated violation
3 of which may result in revocation of post-release supervision, are:

- 4 (1) Work faithfully at suitable employment or faithfully pursue a course of
5 study or vocational training that will equip him for suitable
6 employment.
- 7 (2) Undergo available medical or psychiatric treatment and remain in a
8 specified institution if required for that purpose.
- 9 (3) Attend or reside in a facility providing rehabilitation, instruction,
10 recreation, or residence for persons on post-release supervision.
- 11 (4) Support his dependents and meet other family responsibilities.
- 12 (5) In the case of a supervisee who attended a basic skills program during
13 incarceration, continue attending a basic skills program in pursuit of a
14 General Education Development Degree or adult high school diploma.
- 15 (6) Satisfy other conditions reasonably related to his reintegration into
16 society.

17 (e) Appropriate controlling conditions, violation of which may result in
18 revocation of post-release supervision, are:

- 19 (1) Not use, possess, or control any illegal drug or controlled substance
20 unless it has been prescribed for the defendant by a licensed physician
21 and is in the original container with the prescription number affixed on
22 it; not knowingly associate with any known or previously convicted
23 users, possessors, or sellers of any such illegal drugs or controlled
24 substances; and not knowingly be present at or frequent any place
25 where such illegal drugs or controlled substances are sold, kept, or
26 used.
- 27 (2) Comply with a court order to pay the costs of reintegrative treatment
28 for a minor and a minor's parents or custodians where the offense
29 involved evidence of physical, mental, or sexual abuse of a minor.
- 30 (3) Comply with a court order to pay court costs and costs for appointed
31 counsel or public defender in the case for which the defendant was
32 convicted.
- 33 (4) Not possess a firearm, destructive device, or other dangerous weapon
34 unless granted written permission by the Commission or a post-release
35 supervision officer.
- 36 (5) Report to a post-release supervision officer at reasonable times and in
37 a reasonable manner, as directed by the Commission or a post-release
38 supervision officer.
- 39 (6) Permit a post-release supervision officer to visit him at reasonable
40 times at his home or elsewhere.
- 41 (7) Remain within the geographic limits fixed by the Commission unless
42 granted written permission to leave by the Commission or the post-
43 release supervision officer.

- 1 (8) Answer all reasonable inquiries by the post-release supervision officer
2 and obtain prior approval from the post-release supervision officer for
3 any change in address or employment.
- 4 (9) Promptly notify the post-release supervision officer of any change in
5 address or employment.
- 6 (10) Submit at reasonable times to searches of his person by a post-release
7 supervision officer for purposes reasonably related to his post-release
8 supervision. The Commission may not require as a condition of post-
9 release supervision that the supervisee submit to any other searches
10 that would otherwise be unlawful. Whenever the search consists of
11 testing for the presence of illegal drugs, the supervisee may also be
12 required to reimburse the Department of Correction for the actual cost
13 of drug testing and drug screening, if the results are positive.
- 14 (11) Make restitution or reparation to an aggrieved party as provided in
15 G.S. 148-57.1.
- 16 (12) Comply with an order from a court of competent jurisdiction regarding
17 the payment of an obligation of the parolee in connection with any
18 judgment rendered by the court.

19 (f) Required Supervision Fee. – The Commission must require as a condition of
20 post-release supervision that the supervisee pay a supervision fee of twenty dollars
21 (\$20.00) per month. The Commission may exempt a supervisee from this condition
22 only if it finds that requiring payment of the fee is an undue economic burden. The fee
23 must be paid to the clerk of superior court of the county in which the supervisee was
24 convicted. The clerk must transmit any money collected pursuant to this subsection to
25 the State to be deposited in the State's General Fund. In no event shall a supervisee be
26 required to pay more than one supervision fee per month.

27 **"§ 15A-1370.6. Commencement of post-release supervision; multiple sentences.**

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

33 **"§ 15A-1370.7. Arrest and hearing on post-release supervision violation.**

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

40 (b) When and Where Preliminary Hearing on Post-Release Supervision Violation
41 Required. – Unless the hearing required by subsection (e) of this section is first held or
42 the supervisee waives the hearing or a continuance is requested by the supervisee, a
43 preliminary hearing on supervision violation must be held reasonably near the place of
44 the alleged violation or arrest and within seven working days of the arrest of a

1 supervisee to determine whether there is probable cause to believe that he violated a
2 condition of post-release supervision. Otherwise, the supervisee must be released seven
3 working days after his arrest to continue on supervision pending a hearing. If the
4 supervisee is not within the State, his preliminary hearing is as prescribed by G.S. 148-
5 65.1A.

6 (c) Officers to Conduct Preliminary Hearing. – The preliminary hearing on post-
7 release supervision violation must be conducted by a judicial official, or by a hearing
8 officer designated by the Commission. No person employed by the Department of
9 Correction may serve as a hearing officer at a hearing provided by this section unless he
10 is a member of the Commission, or is employed solely as a hearing officer.

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

23 (e) Revocation Hearing. – Before finally revoking post-release supervision, the
24 Commission must, unless the supervisee waived the hearing or the time limit, provide a
25 hearing within 45 days of the supervisee's reconfinement to determine whether to
26 revoke supervision finally. The Commission must adopt regulations governing the
27 hearing and must file and publish them as provided in Article 5 of Chapter 150B of the
28 General Statutes."

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

30 **"§ 15A-1370.1. Applicability of Article 85.**

31 This Article is applicable to all prisoners serving sentences of imprisonment for
32 convictions of impaired driving under G.S. 20-138.1 and prisoners serving sentences of
33 life imprisonment which include a finding pursuant to G.S. 15A-2002 that they are
34 eligible for parole after 25 years. ~~sentenced prisoners, including Class A and Class B~~
35 ~~felons, and Class C felons who receive a sentence of life imprisonment, who are not~~
36 ~~subject to Article 85A of this Chapter."~~

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

38 **"§ 15A-1371. Parole eligibility, consideration, and refusal.**

39 (a) Eligibility. – Unless his sentence includes a minimum sentence, a prisoner
40 -serving a term of imprisonment for a conviction of impaired driving under G.S. 20-
41 138.1 other than one included in a sentence of special probation imposed under
42 authority of this Subchapter is eligible for release on parole at any time. A prisoner
43 whose sentence includes a minimum term of imprisonment imposed under authority of
44 this Subchapter is eligible for release on parole only upon completion of the service of

1 that minimum term or one fifth of the maximum penalty allowed by law for the offense
 2 for which the prisoner is sentenced, whichever is less, less any credit allowed under
 3 G.S. 15A-1355(c) and Article 19A of Chapter 15 of the General Statutes. ~~Under this~~
 4 ~~section, when the maximum allowed by law for the offense is life imprisonment, one~~
 5 ~~fifth of the maximum is calculated as 20 years.~~

6 (a1) ~~A prisoner serving a term of life imprisonment with no minimum term under~~
 7 ~~G.S. 15A-2002 in which the court found the prisoner to be eligible for parole is eligible~~
 8 ~~for parole after serving 20-25 years. This subsection applies to offenses committed on~~
 9 ~~and after July 1, 1981~~ January 1, 1994.

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

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

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

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

35 a. ~~The prisoner;~~

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

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

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

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

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

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

13 (d) Criteria. — The ~~Parole Commission~~ Post-Release Supervision and Parole
14 Commission may refuse to release on parole a prisoner it is considering for parole if it
15 believes:

- 16 (1) There is a substantial risk that he will not conform to reasonable
17 conditions of parole; or
- 18 (2) His release at that time would unduly depreciate the seriousness of his
19 crime or promote disrespect for law; or
- 20 (3) His continued correctional treatment, medical care, or vocational or
21 other training in the institution will substantially enhance his capacity
22 to lead a law-abiding life if he is released at a later date; or
- 23 (4) There is a substantial risk that he would engage in further criminal
24 conduct.

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

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

- 31 (1) ~~The person is to serve a period of probation following his~~
32 ~~imprisonment;~~
- 33 (2) ~~The person has been reimprisoned following parole as provided in~~
34 ~~G.S. 15A-1373(e); or~~
- 35 (3) ~~The Parole Commission finds facts demonstrating a strong likelihood~~
36 ~~that the health or safety of the person or public would be endangered~~
37 ~~by his release at that time.~~

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

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

- 1 (2) His release at that time would unduly depreciate the seriousness of his
2 crime or promote disrespect for law; or
3 (3) His continued correctional treatment, medical care, or vocational or
4 other training in the institution will substantially enhance his capacity
5 to lead a law-abiding life if he is released at a later date; or
6 (4) There is a substantial risk that he would engage in further criminal
7 conduct.

8 If a prisoner is released on parole by operation of this subsection, the term of parole
9 is the unserved portion of the sentence to imprisonment, and the conditions of parole,
10 unless otherwise specified by the ~~Parole Commission~~Post-Release Supervision and
11 Parole Commission, are those authorized in G.S. 15A-1374(b)(4) through (10).

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

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

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

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

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

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

- 1 (2) Who, in the opinion of the ~~Parole Commission,~~ Post-Release
2 Supervision and Parole Commission, is unlikely to engage in further
3 criminal conduct; and
4 (3) Who agrees to complete service of his sentence as herein specified;
5 and
6 (4) Who has served one-half of his minimum sentence ~~(if he was~~
7 ~~sentenced prior to July 1, 1981), or one fourth of a sentence imposed~~
8 ~~under G.S. 15A-1340.4.~~

9 ~~No prisoner convicted under Article 7A of Chapter 14 of a sex offense, under G.S.~~
10 ~~14-39, 14-41, or 14-43.3, or under G.S. 90-95(h) of a drug trafficking offense~~
11 ~~shall be eligible for community service parole.~~

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

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

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

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

31 "**§ 15A-1372. Length and effect of parole term.**

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

- 34 (1) One year; ~~if the remainder of the maximum term of imprisonment is~~
35 ~~one year or more; or~~ for a conviction for impaired driving under G.S.
36 20-138.1; or
37 (2) ~~The remainder of the maximum term, if the remainder of the term of~~
38 ~~imprisonment is less than one year.~~
39 (2) Three years for a sentence of life imprisonment under G.S. 15A-2002
40 in which the court found the prisoner to be eligible for parole.

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

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

- 1 (2) Five years when the maximum prison sentence imposed is greater than
2 20 years; or
3 (3) Three years when the maximum prison sentence imposed is greater
4 than 10 years but no greater than 20 years; or
5 (4) Two years when the maximum prison sentence imposed is not greater
6 than 10 years.

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

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

- 15 (1) ~~Simultaneously to parole and terminate supervision of a prisoner;~~
16 (2) ~~To parole a prisoner on the condition that he be placed under house~~
17 ~~arrest; or~~
18 (3) ~~To parole a prisoner but continue to supervise the prisoner for a period~~
19 ~~to be determined by the Commission;~~
20 ~~when the prisoner is imprisoned only for a misdemeanor, except those persons~~
21 ~~convicted under G.S. 20-138.1 of driving while impaired or any offense involving~~
22 ~~impaired driving."~~

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

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

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

- 28 (1) The acts charged in the criminal pleading did not at the time they were
29 committed constitute a violation of criminal law.
30 (2) The trial court lacked jurisdiction over the person of the defendant or
31 over the subject matter.
32 (3) The conviction was obtained in violation of the Constitution of the
33 United States or the Constitution of North Carolina.
34 (4) The defendant was convicted or sentenced under a statute that was in
35 violation of the Constitution of the United States or the Constitution of
36 North Carolina.
37 (5) The conduct for which the defendant was prosecuted was protected by
38 the Constitution of the United States or the Constitution of North
39 Carolina.
40 (6) Evidence is available which was unknown or unavailable to the
41 defendant at the time of the trial, which could not with due diligence
42 have been discovered or made available at that time, and which has a
43 direct and material bearing upon the guilt or innocence of the
44 defendant.

- 1 (7) There has been a significant change in law, either substantive or
2 procedural, applied in the proceedings leading to the defendant's
3 conviction or sentence, and retroactive application of the changed legal
4 standard is required.
- 5 (8) The sentence imposed was unauthorized at the time imposed,
6 contained a type of sentence disposition or a term of imprisonment not
7 authorized for the particular class of offense and prior record or
8 conviction level exceeded the maximum authorized by law, was
9 illegally imposed, or is otherwise invalid as a matter of law. However,
10 a motion for appropriate relief on the grounds that the sentence
11 imposed on the defendant is not supported by evidence introduced at
12 the trial and sentencing hearing must be made before the sentencing
13 judge.
- 14 (9) The defendant is in confinement and is entitled to release because his
15 sentence has been fully served."

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

- 17 "(5b) Violation of Sentencing Structure. – The sentence imposed:
- 18 a. Results from an incorrect finding of the defendant's prior record
19 level under G.S. 15A-1340.14 or the defendant's prior
20 conviction level under G.S. 15A-1340.21;
- 21 b. Contains a type of sentence disposition that is not authorized by
22 G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's
23 class of offense and prior record or conviction level; or
- 24 c. Contains a term of imprisonment that is for a duration not
25 authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the
26 defendant's class or offense and prior record or conviction
27 level."

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

29 **"§ 15A-1444. When defendant may appeal; certiorari.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 c. Contains a term of imprisonment that is for a duration not
43 authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the

1 defendant's class of offense and prior record or conviction
2 level."

3 Sec. 28.1. G.S. 15A-2000(d) is rewritten to read:

4 "(d) Review of Judgment and Sentence. –

5 (1) The judgment of conviction and sentence of death shall be subject to
6 automatic review by the Supreme Court of North Carolina pursuant to
7 procedures established by the Rules of Appellate Procedure. In its
8 review, the Supreme Court shall consider the punishment imposed as
9 well as any errors assigned on appeal.

10 (2) The sentence of death shall be overturned and a sentence of life
11 imprisonment imposed in lieu thereof by the Supreme Court upon a
12 finding that the record does not support the jury's findings of any
13 aggravating circumstance or circumstances upon which the sentencing
14 court based its sentence of death, or upon a finding that the sentence of
15 death was imposed under the influence of passion, prejudice, or any
16 other arbitrary factor, or upon a finding that the sentence of death is
17 excessive or disproportionate to the penalty imposed in similar cases,
18 considering both the crime and the defendant. The Supreme Court may
19 suspend consideration of death penalty cases until such time as the
20 court determines it is prepared to make the comparisons required under
21 the provisions of this section. Upon imposition of a sentence of life
22 imprisonment, the Supreme Court shall remand the case to the trial
23 court for imposition of a sentence of life imprisonment without parole,
24 or life in prison with eligibility for parole after 25 years, in accordance
25 with G.S. 15A-2002.

26 (3) If the sentence of death and the judgment of the trial court are
27 reversed on appeal for error in the post-verdict sentencing proceeding,
28 the Supreme Court shall order that a new sentencing hearing be
29 conducted in conformity with the procedures of this Article."

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

31 "**§ 15A-2002. Capital offenses; jury verdict and sentence.**

32 If the recommendation of the jury is that the defendant be sentenced to death, the
33 judge shall impose a sentence of death in accordance with the provisions of Chapter 15,
34 Article 19 of the General Statutes. If the recommendation of the jury is that the
35 defendant be imprisoned for life in the State's prison, the judge shall impose a sentence
36 of imprisonment for life in the State's ~~prison~~ prison without parole, or a sentence of life
37 with eligibility for parole after 25 years.

38 The judge shall instruct the jury, in words substantially equivalent to those of this
39 statute, that a sentence of life imprisonment means either a sentence of life without
40 parole, or a sentence of life with eligibility for parole after 25 years, in the discretion of
41 the court."

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

43 "**§ 90-95. Violations; penalties.**

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

- 1 (1) To manufacture, sell or deliver, or possess with intent to manufacture,
2 sell or deliver, a controlled substance;
- 3 (2) To create, sell or deliver, or possess with intent to sell or deliver, a
4 counterfeit controlled substance;
- 5 (3) To possess a controlled substance.
- 6 (b) Except as provided in subsections (h) and (i) of this section, any person who
7 violates G.S. 90-95(a)(1) with respect to:
- 8 (1) A controlled substance classified in Schedule I or II shall be punished
9 as a Class H felon;
- 10 (2) A controlled substance classified in Schedule III, IV, V, or VI shall be
11 punished as a Class I felon, but the transfer of less than 5 grams of
12 marijuana for no remuneration shall not constitute a delivery in
13 violation of G.S. 90-95(a)(1).
- 14 (c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I
15 felon.
- 16 (d) Except as provided in subsections (h) and (i) of this section, any person who
17 violates G.S. 90-95(a)(3) with respect to:
- 18 (1) A controlled substance classified in Schedule I shall be punished as a
19 Class I felon;
- 20 (2) A controlled substance classified in Schedule II, III, or IV shall be
21 guilty of a ~~misdemeanor, and shall be sentenced to a term of~~
22 ~~imprisonment of not more than two years or fined not more than two~~
23 ~~thousand dollars (\$2,000), or both in the discretion of the court. Class~~
24 ~~1 misdemeanor.~~ If the controlled substance exceeds four tablets,
25 capsules, or other dosage units or equivalent quantity of
26 hydromorphone or if the quantity of the controlled substance, or
27 combination of the controlled substances, exceeds one hundred tablets,
28 capsules or other dosage units, or equivalent quantity, the violation
29 shall be punishable as a Class I felony. If the controlled substance is
30 phencyclidine, or cocaine and any salt, isomer, salts of isomers,
31 compound, derivative, or preparation thereof, or coca leaves and any
32 salt, isomer, salts of isomers, compound, derivative, or preparation of
33 coca leaves, or any salt, isomer, salts of isomers, compound, derivative
34 or preparation thereof which is chemically equivalent or identical with
35 any of these substances (except decocanized coca leaves or any
36 extraction of coca leaves which does not contain cocaine or ecgonine),
37 the violation shall be punishable as a Class I felony.
- 38 (3) A controlled substance classified in Schedule V shall be guilty of a
39 ~~misdemeanor and shall be sentenced to a term of imprisonment of not~~
40 ~~more than six months or fined not more than five hundred dollars~~
41 ~~(\$500.00), or both in the discretion of the court; Class 2 misdemeanor;~~
- 42 (4) A controlled substance classified in Schedule VI shall be guilty of a
43 Class 3 misdemeanor, and shall be sentenced to a term of
44 ~~imprisonment of not more than 30 days or fined not more than one~~

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

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

- 17 (1) Possess an immediate precursor chemical with intent to manufacture a
18 controlled substance; or
- 19 (2) Possess or distribute an immediate precursor chemical knowing, or
20 having reasonable cause to believe, that the immediate precursor
21 chemical will be used to manufacture a controlled substance.

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

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

- 27 (1) Anthranilic acid.
- 28 (2) Benzyl cyanide.
- 29 (3) Chloroephedrine.
- 30 (4) Chloropseudoephedrine.
- 31 (5) D-lysergic acid.
- 32 (6) Ephedrine.
- 33 (7) Ergonovine maleate.
- 34 (8) Ergotamine tartrate.
- 35 (9) Ethyl Malonate.
- 36 (10) Ethylamine.
- 37 (11) Isosafrole.
- 38 (12) Malonic acid.
- 39 (13) Methylamine.
- 40 (14) N-acetylanthranilic acid.
- 41 (15) N-ethylephedrine.
- 42 (16) N-ethylepseudoephedrine.
- 43 (17) N-methylephedrine.
- 44 (18) N-methylpseudoephedrine.

- 1 (19) Norpseudoephedrine.
 2 (20) Phenyl-2-propane.
 3 (21) Phenylacetic acid.
 4 (22) Phenylpropanolamine.
 5 (23) Piperidine.
 6 (24) Piperonal.
 7 (25) Propionic anhydride.
 8 (26) Pseudoephedrine.
 9 (27) Pyrrolidine.
 10 (28) Safrole.
 11 (29) Thionylchloride.

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

- 15 (1),(2) Repealed by Session Laws 1979, c. 760, s. 5.
 16 (3) If any person commits ~~an offense~~ a Class 1 misdemeanor under this
 17 Article ~~for which the prescribed punishment includes imprisonment for~~
 18 ~~not more than two years,~~ and if he has previously been convicted for
 19 one or more offenses under any law of North Carolina or any law of
 20 the United States or any other state, which offenses are punishable
 21 under any provision of this Article, he shall be punished as a Class I
 22 ~~felon;~~ felon. The prior conviction used to raise the current offense to a
 23 Class I felony cannot be used to calculate the prior record level;
 24 (4) If any person commits ~~an offense under this Article for which the~~
 25 ~~prescribed punishment includes imprisonment for not more than six~~
 26 ~~months~~ a Class 2 misdemeanor, and if he has previously been convicted
 27 for one or more offenses under any law of North Carolina or any law
 28 of the United States or any other state, which offenses are punishable
 29 under any provision of this Article, he shall be guilty of a
 30 ~~misdemeanor and shall be sentenced to a term of imprisonment of not~~
 31 ~~more than two years or fined not more than two thousand dollars~~
 32 ~~(\$2,000), or both in the discretion of the court;~~ Class 1 misdemeanor.
 33 The prior conviction used to raise the current offense to a Class 1
 34 misdemeanor cannot be used to calculate the prior conviction level;
 35 (5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by
 36 selling or delivering a controlled substance to a person under 16 years
 37 of age or a pregnant female shall be punished as a Class E felon.
 38 Mistake of age is not a defense to a prosecution under this section. It
 39 shall not be a defense that the defendant did not know that the recipient
 40 was pregnant;
 41 (6) For the purpose of increasing ~~punishment,~~ punishment under G.S. 90-
 42 95(e)(3) and (e)(4), previous convictions for offenses shall be counted
 43 by the number of separate trials at which final convictions were
 44 obtained and not by the number of charges at a single trial;

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

1 probation. A person whose special probation term has been revoked may be required to
2 serve all or part of the remainder of the new term of imprisonment.

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

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

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

17 a. Is in excess of 50 pounds, but less than 100 pounds, such person
18 shall be punished as a Class H felon and shall be sentenced to a
19 minimum term of at least five years-25 months in the State's
20 prison and shall be fined not less than five thousand dollars
21 (\$5,000);

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

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

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

36 (2) Any person who sells, manufactures, delivers, transports, or possesses
37 1,000 tablets, capsules or other dosage units, or the equivalent
38 quantity, or more of methaqualone, or any mixture containing such
39 substance, shall be guilty of a felony which felony shall be known as
40 'trafficking in methaqualone' and if the quantity of such substance or
41 mixture involved:

42 a. Is 1,000 or more dosage units, or equivalent quantity, but less
43 than 5,000 dosage units, or equivalent quantity, such person
44 shall be punished as a Class G felon and shall be sentenced to a

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

1 amphetamine' and if the quantity of such substance or mixture
2 involved:

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

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

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

20 (3b) Any person who sells, manufactures, delivers, transports, or possesses
21 28 grams or more of methamphetamine shall be guilty of a felony
22 which felony shall be known as 'trafficking in methamphetamine' and
23 if the quantity of such substance or mixture involved:

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

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

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

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

1 or heroin' and if the quantity of such controlled substance or mixture
2 involved:

- 3 a. Is four grams or more, but less than 14 grams, such person shall
4 be punished as a Class F felon and shall be sentenced to a
5 minimum term of at least 14 years 70 months in the State's
6 prison and shall be fined not less than fifty thousand dollars
7 (\$50,000);
- 8 b. Is 14 grams or more, but less than 28 grams, such person shall
9 be punished as a Class E felon and shall be sentenced to a
10 minimum term of at least 18 years 90 months in the State's
11 prison and shall be fined not less than one hundred thousand
12 dollars (\$100,000);
- 13 c. Is 28 grams or more, such person shall be punished as a Class C
14 felon and shall be sentenced to a minimum term of at least 45
15 years 225 months in the State's prison and shall be fined not less
16 than five hundred thousand dollars (\$500,000).

17 (4a) Any person who sells, manufactures, delivers, transports, or
18 possesses 100 tablets, capsules, or other dosage units, or the
19 equivalent quantity, or more, of Lysergic Acid Diethylamide, or any
20 mixture containing such substance, shall be guilty of a felony, which
21 felony shall be known as 'trafficking in Lysergic Acid Diethylamide'.
22 If the quantity of such substance or mixture involved:

- 23 a. Is 100 or more dosage units, or equivalent quantity, but less
24 than 500 dosage units, or equivalent quantity, such person shall
25 be punished as a Class G felon and shall be sentenced to a
26 minimum term of at least seven years 35 months in the State's
27 prison and shall be fined not less than twenty-five thousand
28 dollars (\$25,000);
- 29 b. Is 500 or more dosage units, or equivalent quantity, but less
30 than 1,000 dosage units, or equivalent quantity, such person
31 shall be punished as a Class F felon and shall be sentenced to a
32 minimum term of at least 14 years 35 months in the State's
33 prison and shall be fined not less than fifty thousand dollars
34 (\$50,000);
- 35 c. Is 1,000 or more dosage units, or equivalent quantity, such
36 person shall be punished as a Class D felon and shall be
37 sentenced to a minimum term of at least 35 years 175 months in
38 the State's prison and shall be fined not less than two hundred
39 thousand dollars (\$200,000).
- 40 (5) Except as provided in this subdivision, a person being sentenced under
41 this subsection may not receive a suspended sentence or be placed on
42 probation. ~~A person sentenced under this subsection as a committed~~
43 ~~youthful offender shall be eligible for release or parole no earlier than~~
44 ~~that person would have been had he been sentenced under this~~

1 ~~subsection as a regular offender.~~—The sentencing judge may reduce the
2 fine, or impose a prison term less than the applicable minimum prison
3 term provided by this subsection, or suspend the prison term imposed
4 and place a person on probation when such person has, to the best of
5 his knowledge, provided substantial assistance in the identification,
6 arrest, or conviction of any accomplices, accessories, co-conspirators,
7 or principals if the sentencing judge enters in the record a finding that
8 the person to be sentenced has rendered such substantial assistance.

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

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

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

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

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

19 "**§ 148-13. Regulations as to custody grades, privileges, gain time credit, etc.**

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

26 (a1) The Secretary of Correction shall promulgate rules to specify the rates at, and
27 circumstances under, which earned time authorized by G.S. 15A-1340.13(d) and G.S.
28 15A-1340.20(d) may be earned or forfeited by persons serving activated sentences of
29 imprisonment for felony or misdemeanor convictions.

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

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

42 ~~(d) With respect to prisoners serving prison or jail terms for felonies that~~
43 ~~occurred on or after the effective date of Article 81A of Chapter 15A, the Secretary of~~
44 ~~Correction shall issue regulations authorizing gain time credit to be deducted from the~~

1 terms of such prisoners, in addition to the good behavior credit authorized by G.S. 15A-
2 1340.7. Gain time credit may be granted for meritorious conduct and shall be granted
3 for performance of regular work and regular participation in study, training, work
4 release, and other rehabilitative programs inside or outside the prison or jail. Gain time
5 credit earned pursuant to regulations issued under this subsection shall not be subject to
6 forfeiture for misconduct. Gain time shall be administered to qualified prisoners as
7 follows:

8 (1) Gain Time I. In addition to the good behavior credit authorized by G.S.
9 15A-1340.7, prisoners who perform work assignments requiring at
10 least four hours of actual work per day, and prisoners who participate
11 in study, training, or other rehabilitative programs requiring at least
12 four hours of productive activity per day, shall receive gain time credit
13 at the rate of two days per month.

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

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

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

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

37 (f) The provisions of this section do not apply to persons sentenced to a term of
38 special probation under G.S. 15A-1344(e) or G.S. 15A-1351(a) or to persons convicted
39 pursuant to G.S. 130A-25 of failing to obtain the treatment required by Part 3 or Part 5
40 of Article 6 of Chapter 130A or of violating G.S. 130A-144(f) or G.S. 130A-145. G.S.
41 15A-1351(a)."

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

43 "**§ 148-32.1. Local confinement, costs, alternate facilities, parole, work release.**

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

- 9 (1) Medical expenses incurred as a result of providing health care to an
10 inmate as an inpatient (hospitalized);
11 (2) Other medical expenses when the total cost exceeds thirty-five dollars
12 (\$35.00) per occurrence or illness as a result of providing health care
13 to an inmate as an outpatient (nonhospitalized); and
14 (3) Cost of replacement of eyeglasses and dental prosthetic devices if
15 those eyeglasses or devices are broken while the inmate is
16 incarcerated, provided the inmate was using the eyeglasses or devices
17 at the time of his commitment and then only if prior written consent of
18 the Department is obtained by the local facility.

19 (b) In the event that the custodian of the local confinement facility certifies in
20 writing to the clerk of the superior court in the county in which said local confinement
21 facility is located that the local confinement facility is filled to capacity, or that the
22 facility cannot reasonably accommodate any more prisoners due to segregation
23 requirements for particular prisoners, or that the custodian anticipates, in light of local
24 experiences, an influx of temporary prisoners at that time, or if the local confinement
25 facility does not meet the minimum standards published pursuant to G.S. 153A-221, any
26 judge of the district court in the district court district as defined in G.S. 7A-133 where
27 the facility is located, or any superior court judge who has jurisdiction pursuant to G.S.
28 7A-47.1 or 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the
29 facility is located may order that the prisoner be transferred to any other qualified local
30 confinement facility within that district or within another such district where space is
31 available, including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the
32 prisoner is a non-violent misdemeanor, which local facility shall accept the transferred
33 prisoner, if the prison population has exceeded the limits established in G.S. 148-4.1(d).
34 If no such local confinement facility is available, then any such judge may order the
35 prisoner transferred to such camp or facility as the proper authorities of the Department
36 of Correction shall designate, notwithstanding that the term of imprisonment of the
37 prisoner is 180 days or less. In no event, however, shall a prisoner whose term of
38 imprisonment is less than 30 days be assigned or ordered transferred to any such camp
39 or facility.

40 (c) When a prisoner sentenced for a conviction of impaired driving under G.S.
41 20-138.1 is assigned to a local confinement facility pursuant to this section, the clerk of
42 the superior court in the county in which the sentence was imposed shall immediately
43 forward a copy of the commitment order to the ~~Parole Commission~~ Post-Release

1 Supervision and Parole Commission so that the prisoner will be eligible for parole
2 pursuant to G.S. 15A-1371.

3 (d) When a prisoner serving a sentence of 30 days or more in a local confinement
4 facility is placed on work release pursuant to a recommendation of the sentencing court,
5 the custodian of the facility shall forward the prisoner's work-release earnings to the
6 Department of Correction, which shall disburse the earnings as determined under G.S.
7 148-33.1(f). When a prisoner serving a sentence of 30 days or more in a local
8 confinement facility is placed on work release pursuant to an order of the sentencing
9 court, the custodian of the facility shall forward the prisoner's work-release earnings to
10 the clerk of the court that sentenced the prisoner or to the Department of Correction, as
11 provided in the prisoner's commitment order. The clerk or the Department, as
12 appropriate, shall disburse the earnings as provided in the prisoner's commitment order.
13 Upon agreement between the Department of Correction and the custodian of the local
14 confinement facility, however, the clerk may disburse to the local confinement facility
15 the amount of the earnings to be paid for the cost of the prisoner's keep, and that amount
16 shall be set off against the reimbursement to be paid by the Department to the local
17 confinement facility pursuant to G.S. 148-32.1(a).

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

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

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

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

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

41 "**§ 162-60. Reduction in sentence allowed for work.**

42 In addition to any ~~gain earned time credit to which he is otherwise entitled~~he may be
43 awarded under G.S. 15A-1340.20, a prisoner who has faithfully performed the duties
44 assigned to him pursuant to G.S. 162-58 is entitled to a reduction in his sentence of four

1 days for each 30 days of work performed. The person having custody of the prisoner, as
2 defined in G.S. 162-59, shall be the sole judge as to whether the prisoner has faithfully
3 performed his duties. A prisoner who escapes or attempts to escape while performing
4 work pursuant to G.S. 162-58 shall forfeit any reduction in sentence that he would have
5 been entitled to under this section."

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

7 **"§ 15A-1352. Commitment to Department of Correction or local confinement**
8 **facility.**

9 (a) A person sentenced to imprisonment for a misdemeanor under this Article or
10 for nonpayment of a fine under Article 84 of this Chapter shall be committed for the
11 term designated by the court to the custody of the Department of Correction or to a local
12 confinement facility. If the sentence imposed for a misdemeanor is for a period of ~~180~~
13 90 days or less, the commitment must be to a facility other than one maintained by the
14 Department of Correction, except as provided in G.S. 148-32.1(b).

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

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

28 (c) A person sentenced to imprisonment for nonpayment of a fine under Article
29 84, Fines, shall be committed for the term designated by the court:

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

32 (2) To the custody of the Department of Correction or to a local
33 confinement facility if the person was fined for conviction of a
34 misdemeanor, provided that if the sentence imposed is for a period of
35 ~~180~~90 days or less, the commitment shall be to a facility other than
36 one maintained by the Department of Correction, except as provided in
37 G.S. 148-32.1(b).

38 (d) Notwithstanding any other provision of law, when the sentencing court, with
39 the consent of the person sentenced, orders that a person convicted of a misdemeanor be
40 granted work release, the court may commit the person to a specific prison facility or
41 local confinement facility or satellite jail/work release unit within the county of the
42 sentencing court in order to facilitate the work release arrangement. When appropriate
43 to facilitate the work release arrangement, the sentencing court may, with the consent of
44 the sheriff or board of commissioners, commit the person to a specific local

1 confinement facility or satellite jail/work release unit in another county, or, with the
2 consent of the Department of Correction, commit the person to a specific prison facility
3 in another county. The Department of Correction may transfer a prisoner committed to a
4 specific prison facility to a different facility when necessary to alleviate overcrowding
5 or for other administrative purposes."

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

7 **"§ 15A-1373. Incidents of parole.**

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

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

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

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

- 23 (1) The time the parolee was at liberty on parole and in compliance with
24 all terms and conditions of that parole shall be credited on a day-for-
25 day basis against the maximum term of imprisonment imposed by the
26 court under G.S. 15A-1351, except that the parolee shall receive no
27 credit for the last six months of his parole.
- 28 (2) The prisoner must be given credit against the term of reimprisonment
29 for all time spent in custody as a result of revocation proceedings
30 under G.S. 15A-1376.

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

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

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

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

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

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

9 "**§ 15A-1376. Arrest and hearing on parole violation.**

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

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

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

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

41 (e) Revocation Hearing. – Before finally revoking parole, the ~~Parole Commission~~
42 Post-Release Supervision and Parole Commission must, unless the parolee waived the
43 hearing or the time limit, provide a hearing within 45 days of the parolee's
44 reconfinement to determine whether to revoke parole finally. The ~~Parole Commission~~

1 Post-Release Supervision and Parole Commission must adopt regulations governing the
2 hearing and must file and publish them as provided in Article 5 of Chapter 150B of the
3 General Statutes."

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

5 **"§ 143B-264. Department of Correction – organization.**

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

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

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

15 **"§ 143B-266. ~~Parole Commission~~Post-Release Supervision and Parole Commission**
16 **– creation, powers and duties.**

17 (a) There is hereby created a ~~Parole Commission~~Post-Release Supervision and
18 Parole Commission of the Department of Correction with the authority to grant paroles,
19 including both regular and temporary paroles, to persons held by virtue of any final
20 order or judgment of any court of this State as provided in Chapter 148 of the General
21 Statutes and laws of the State of North Carolina, except that for persons sentenced under
22 Article 81B of Chapter 15A of the General Statutes, only those sentenced to life
23 imprisonment with eligibility for parole after 25 years are eligible for parole. The
24 Commission shall also have authority to revoke, terminate, and suspend paroles of such
25 persons (including persons placed on parole on or before the effective date of the
26 Executive Organization Act of 1973) and to assist the Governor in exercising his
27 authority in granting reprieves, commutations, and pardons, and shall perform such
28 other services as may be required by the Governor in exercising his powers of executive
29 clemency. The Commission shall also have authority to revoke and terminate persons
30 on post-release supervision, as provided in Article 84A of Chapter 15A of the General
31 Statutes.

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

40 (c) The Commission is authorized and empowered to adopt such rules and
41 regulations, not inconsistent with the laws of this State, in accordance with which
42 prisoners eligible for parole consideration may have their cases reviewed and
43 investigated and by which such proceedings may be initiated and considered. All rules
44 and regulations heretofore adopted by the Board of Paroles shall remain in full force and

1 effect unless and until repealed or superseded by action of the ~~Parole Commission~~Post-
2 Release Supervision and Parole Commission. All rules and regulations adopted by the
3 Commission shall be enforced by the Department of Correction.

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

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

10 "**§ 143B-267. Parole Commission**~~Post-Release Supervision and Parole Commission~~
11 **- members; selection; removal; chairman; compensation; quorum;**
12 **services.**

13 The ~~Parole Commission~~Post-Release Supervision and Parole Commission shall
14 consist of five full-time members. The five full-time members shall be appointed by the
15 Governor from persons whose recognized ability, training, experience, and character
16 qualify them for service on the Commission. The terms of office of the five members
17 presently serving on the Commission shall expire on June 30, 1977. Thereafter, the
18 terms of office of persons appointed by the Governor as members of the Commission
19 shall be for four years or until their successors are appointed and qualify. Any
20 appointment to fill a vacancy on the Commission created by the resignation, removal,
21 death or disability of a full-time member shall be for the balance of the unexpired term
22 only.

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

27 With regard to the transaction of the business of the Commission the following
28 procedure shall be followed: The chairman shall designate panels of two voting
29 commission members and shall designate a third commissioner to serve as an alternate
30 member of a panel. Insofar as practicable, the chairman shall assign the members to
31 panels in such fashion that each commissioner sits a substantially equal number of times
32 with each other commissioner. Whenever any matter of business, such as the granting,
33 denying, revoking or rescinding of parole, or the authorization of work-release
34 privileges to a prisoner, shall come before the Commission for consideration and
35 action, the chairman shall refer such matter to a panel. Action may be taken by
36 concurring vote of the two sitting panel members. If there is not a concurring vote of the
37 two panel members, the matter will be referred to the alternate member who shall cast
38 the deciding vote. However, no person serving a sentence of life imprisonment shall be
39 granted parole or work-release privileges except by majority vote of the full
40 commission.

41 The full-time members of the Commission shall receive the salary fixed by the
42 General Assembly in the Current Operations Appropriations Act and shall receive
43 necessary travel and subsistence expenses in accordance with the provisions of G.S.
44 138-6.

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

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

4 **"§ 148-52.1. Prohibited political activities of member of ~~Parole Commission~~Post-**
5 **Release Supervision and Parole Commission.**

6 No member of the ~~Parole Commission~~Post-Release Supervision and Parole
7 Commission shall be permitted to use his position to influence elections or the political
8 action of any person, serve as a member of the campaign committee of any political
9 party, interfere with or participate in the preparation for any election or the conduct
10 thereof at the polling place, or be in any manner concerned in the demanding, soliciting
11 or receiving of any assessments, subscriptions or contributions, whether voluntary or
12 involuntary, to any political party. Any ~~Parole Commission~~Post-Release Supervision
13 and Parole Commission member who shall violate any of the provisions of this section
14 shall be subject to dismissal from office."

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

16 **"§ 148-53. Investigators and investigations of cases of prisoners.**

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

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

27 **"§ 148-54. Parole and post-release supervision supervisors provided for; duties.**

28 The Department of Correction is hereby authorized to appoint a sufficient number of
29 competent parole and post-release supervision supervisors, who shall be particularly
30 qualified for and adapted for the work required of them, and who shall under the
31 direction of the Department of Correction, and under regulations prescribed by the
32 Department of Correction after consultation with the Commission, exercise supervision
33 and authority over paroled prisoners and persons on post-release supervision, assist
34 paroled prisoners and persons on post-release supervision, and those who are to be
35 paroled or released for post-release supervision in finding and retaining self-supporting
36 employment, and to promote rehabilitation work with paroled and post-release
37 supervised prisoners, to the end that they may become law-abiding citizens. The
38 supervisors shall also, under the direction of the Department of Correction, maintain
39 frequent contact with paroled and post-release supervised prisoners and find out
40 whether or not they are observing the conditions of their paroles or post-release
41 supervision, and assist them in every possible way toward compliance with the
42 conditions, and they shall perform such other duties in connection with paroled
43 prisoners as the Department of Correction may require. The number of supervisors may

1 be increased by the Department of Correction as and when the number of paroled and
2 post-release supervised prisoners to be supervised requires or justifies such increase."

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

4 **"§ 148-56. Assistance in supervision of parolees or post-release supervisees and**
5 **preparation of case histories.**

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

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

12 **"§ 148-57. Rules and regulations for parole consideration.**

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

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

21 **"§ 148-57.1. Restitution as a condition of parole or post-release supervision.**

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

23 (b) As a rehabilitative measure, the ~~Parole Commission~~Post-Release Supervision
24 and Parole Commission is authorized to require a prisoner to whom parole or post-
25 release supervision is granted to make restitution or reparation to an aggrieved party as a
26 condition of parole or post-release supervision when the sentencing court recommends
27 that restitution or reparation to an aggrieved party be made a condition of any parole or
28 post-release supervision granted the defendant. When imposing restitution as a
29 condition and setting up a payment schedule for the restitution, the ~~Parole Commission~~
30 Post-Release Supervision and Parole Commission shall take into consideration the
31 resources of the defendant, including all real and personal property owned by the
32 defendant and the income derived from such property, his ability to earn, and his
33 obligation to support dependents. The ~~Parole Commission~~Post-Release Supervision and
34 Parole Commission shall not be bound by such recommendation, but if it elects not to
35 implement the recommendation, it shall state in writing the reasons therefor, and shall
36 forward the same to the sentencing court.

37 (c) When an active sentence is imposed, the court shall consider whether, as a
38 rehabilitative measure, it should recommend to the ~~Parole Commission~~Post-Release
39 Supervision and Parole Commission that restitution or reparation by the defendant be
40 made a condition of any parole or post-release supervision granted the defendant. If the
41 court determines that restitution or reparation should not be recommended, it shall so
42 indicate on the commitment. If, however, the court determines that restitution or
43 reparation should be recommended, the court shall make its recommendation a part of
44 the order committing the defendant to custody. The recommendation shall be in

1 accordance with the applicable provisions of G.S. 15A-1343(d). The Administrative
2 Office of the Courts shall prepare and distribute forms which provide ample space to
3 make restitution or reparation recommendations incident to commitments, which forms
4 shall be conveniently structured to enable the sentencing court to make its
5 recommendation.

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

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

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

17 "**§ 148-59. Duties of clerks of superior courts as to commitments; statements filed**
18 **with Department of Correction.**

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

- 23 (1) The court in which the prisoner was tried;
- 24 (2) The name of the prisoner and of all codefendants;
- 25 (3) The date or session when the prisoner was tried;
- 26 (4) The offense with which the prisoner was charged and the offense for which
27 convicted;
- 28 (5) The judgment of the court and the date of the beginning of the sentence;
- 29 (6) The name and address of the presiding judge;
- 30 (7) The name and address of the prosecuting solicitor;
- 31 (8) The name and address of private prosecuting attorney, if any;
- 32 (9) The name and address of the arresting officer; and
- 33 (10) All available information of the previous criminal record of the prisoner.

34 The prison authorities receiving the prisoner for the beginning of the service of
35 sentence shall detach from the commitment the statement furnishing such information
36 and forward it to the Department of Correction, together with any additional
37 information in the possession of such prison authorities relating to the previous criminal
38 record of such prisoner, and the information thus furnished shall constitute the
39 foundation and file of the prisoner's case. Forms for furnishing the information required
40 by this section shall, upon request, be furnished to the said clerks by the State
41 Department of Correction without charge."

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

43 "**§ 148-60.1. Allowances for paroled prisoner and prisoner on post-release**
44 **supervision.**

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

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

9 **"§ 148-62.1. Entitlement of indigent parolee to counsel, in discretion of Board of**
 10 **Paroles, at revocation hearings. Entitlement of indigent parolee and post-**
 11 **release supervisee to counsel, in discretion of Post-Release Supervision**
 12 **and Parole Commission.**

13 Any parolee or post-release supervisee who is an indigent under the terms of G.S.
 14 7A-450(a) may be determined entitled, in the discretion of the ~~North Carolina Board~~
 15 ~~of Paroles~~ Post-Release Supervision and Parole Commission, to the services of counsel
 16 at State expense at a parole revocation hearing at which either:

- 17 (1) The parolee or post-release supervisee claims not to have committed
 18 the alleged violation of the parole or post-release supervision
 19 conditions; or
- 20 (2) The parolee or post-release supervisee claims there are substantial
 21 reasons which justified or mitigated the violation and make revocation
 22 inappropriate, even if the violation is a matter of public record or is
 23 uncontested, and that the reasons are complex or otherwise difficult to
 24 develop or present; or
- 25 (3) The parolee or post-release supervisee is incapable of speaking
 26 effectively for himself; and where the ~~Board~~ Commission feels, on a
 27 case by case basis, that such appointment in accordance with either (1),
 28 (2) or (3) above is necessary for fundamental fairness."

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

30 **"§ 148-63. Arrest powers of police officers.**

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

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

35 **"§ 148-64. Cooperation of prison and parole officials and employees.**

36 The officials and employees of the Department of Correction and the ~~{Parole~~
 37 ~~Commission}~~ Post-Release Supervision and Parole Commission shall at all times
 38 cooperate with and furnish each other such information and assistance as will promote
 39 the purposes of this Chapter and the purposes for which these agencies were established.
 40 The ~~Parole Commission~~ shall have free access to all prisoners."

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

42 **"§ 148-65.3. North Carolina sentence to be served in another jurisdiction.**

43 The ~~Parole Commission~~ Post-Release Supervision and Parole Commission, with the
 44 concurrence of the Secretary of Correction, may direct that the balance of any sentence

1 imposed by the courts of this State shall be served concurrently with a sentence or
2 sentences in another state or federal institution, and may effect a transfer of custody of
3 such individual to the other jurisdiction for such purpose. In the event the individual's
4 sentence liability in the other jurisdiction terminates prior to the expiration of his North
5 Carolina sentence, the individual shall be either paroled (if eligible) or returned to the
6 prison department of this State, in the discretion of the ~~Parole Commission~~ Post-Release
7 Supervision and Parole Commission."

8 Sec. 56. This act becomes effective January 1, 1994, and applies only to
9 offenses occurring on or after that date. Prosecutions for, or sentences based on,
10 offenses occurring before the effective date of this act are not abated or affected by the
11 repeal or amendment in this act of any statute, and the statutes that would be applicable
12 to those prosecutions or sentences but for the provisions of this act remain applicable to
13 those prosecutions or sentences.