

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1936\*  
Committee Substitute Favorable 6/13/94  
Committee Substitute #2 Favorable 6/16/94

Short Title: Criminal Technical Corrections.

(Public)

Sponsors:

Referred to:

June 1, 1994

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND TO MAKE CLARIFYING AND CONFORMING CHANGES TO VARIOUS CRIMINAL STATUTES, TO REPEAL VARIOUS CRIMINAL LAWS THAT ARE OBSOLETE OR REDUNDANT, AND TO EXTEND THE SUNSET FOR THE METHOD OF SELECTING MEMBERS OF THE NORTH CAROLINA SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION APPOINTED BY THE NORTH CAROLINA SHERIFFS' ASSOCIATION.

The General Assembly of North Carolina enacts:

PART 1. EARNED TIME FOR MISDEMEANOR OFFENDERS

Section 1. G.S. 15A-1340.20(d) reads as rewritten:

"(d) Earned Time Authorization. – An offender sentenced to a term of imprisonment that is activated is eligible to receive earned time credit for misdemeanor offenders awarded by the Department of Correction or the custodian of a local confinement facility, pursuant to rules adopted in accordance with ~~law-~~law and pursuant to G.S. 162-60. These rules and statute combined shall not award misdemeanor offenders more than four days of earned time credit per month of incarceration."

Sec. 2. G.S. 162-60 reads as rewritten:

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

1 ~~In addition to any earned time credit a prisoner may be awarded under G.S. 15A-1340.20, a~~  
2 A prisoner who has faithfully performed the duties assigned to him pursuant to G.S.  
3 162-58 is entitled to a reduction in his sentence of four days for each 30 days of work  
4 performed. The person having custody of the prisoner, as defined in G.S. 162-59, shall  
5 be the sole judge as to whether the prisoner has faithfully performed his duties. A  
6 prisoner who escapes or attempts to escape while performing work pursuant to G.S.  
7 162-58 shall forfeit any reduction in sentence that he would have been entitled to under  
8 this section."

9 Sec. 3. G.S. 153A-230.3(b) reads as rewritten:

10 "(b) Operation of Satellite Jail/Work Release Unit. – A county or group  
11 of counties operating a satellite jail/work release unit shall comply with the following  
12 requirements concerning operation of the unit:

13 (1) The county shall make every effort to ensure that at least eighty  
14 percent (80%) of the unit occupants shall be employed and on work  
15 release, and that the remainder shall earn their keep by working at the  
16 unit on maintenance and other jobs related to the upkeep and operation  
17 of the unit or by assignment to community service work, and that  
18 alcohol and drug rehabilitation be available through community  
19 resources.

20 (2) The county shall require the occupants to give their earnings, less  
21 standard payroll deductions required by law and premiums for group  
22 health insurance coverage, to the Sheriff. The county may charge a  
23 per day charge from those occupants who are employed or otherwise  
24 able to pay from other resources available to the occupants. The per  
25 day charge shall be calculated based on the following formula: The  
26 charge shall be either the amount that the Department of Correction  
27 deducts from a prisoner's work-release earnings to pay for the cost of  
28 the prisoner's keep or fifty percent (50%) of the occupant's net weekly  
29 income, whichever is greater, but in no event may the per day charge  
30 exceed an amount that is twice the amount that the Department of  
31 Correction pays each local confinement facility for the cost of  
32 providing food, clothing, personal items, supervision, and necessary  
33 ordinary medical expenses. The per day charge may be adjusted on an  
34 individual basis where restitution and/or child support has been  
35 ordered, or where the occupant's salary or resources are insufficient to  
36 pay the charge.

37 The county also shall accumulate a reasonable sum from the  
38 earnings of the occupant to be returned to him when he is released  
39 from the unit. The county also shall follow the guidelines established  
40 for the Department of Correction in G.S. 148-33.1(f) for determining  
41 the amount and order of disbursements from the occupant's earnings.

42 (3) Any and all proceeds from daily fees shall belong to the county's  
43 General Fund to aid in offsetting the operation and maintenance of the  
44 satellite unit.

- 1 (4) The unit shall be operated on a full-time basis, i.e., seven days/nights a  
2 week, but weekend leave may be granted by the Sheriff. In granting  
3 weekend leave, the Sheriff shall follow the policies and procedures of  
4 the Department of Correction for granting weekend leave for Level 3  
5 minimum custody inmates.
- 6 (5) ~~Good time and gain~~ Earned time shall be applied to these county  
7 prisoners in the same manner as prescribed in G.S. ~~15A-1340.7~~ 15A-  
8 1340.20 and G.S. 148-13 for State prisoners.
- 9 (6) The Sheriff shall maintain complete and accurate records on each  
10 inmate. These records shall contain the same information as required  
11 for State prisoners that are housed in county local confinement  
12 facilities."

13 Sec. 4. G.S. 15A-1368.2(a) reads as rewritten:

14 "(a) A prisoner to whom this Article applies shall be released from prison for  
15 post-release supervision on the date equivalent to his maximum imposed prison term  
16 less nine months, less any earned time awarded by the Department of Correction or the  
17 custodian of a local confinement facility under G.S. ~~15A-1340(d)~~ 15A-1340.13(d). If a  
18 prisoner has not been awarded any earned time, the prisoner shall be released for post-  
19 release supervision on the date equivalent to his maximum prison term less nine  
20 months."

21 Sec. 5. G.S. 15A-1368.3(c) reads as rewritten:

22 "(c) Effect of Violation. – If the supervisee violates a condition, described in G.S.  
23 15A-1368.4, at any time before the termination of the supervision period, the  
24 Commission may continue the supervisee on the existing supervision, with or without  
25 modifying the conditions, or if continuation or modification is not appropriate, may  
26 revoke post-release supervision as provided in G.S. 15A-1368.6 and reimprison the  
27 supervisee for a term consistent with the following requirements:

- 28 (1) The supervisee will be returned to prison up to the time remaining on  
29 his maximum imposed term.
- 30 (2) The supervisee shall not receive any credit for days on post-release  
31 supervision against the maximum term of imprisonment imposed by  
32 the court under G.S. 15A-1340.13.
- 33 (3) Pursuant to Article 19A of Chapter 15, the Department of Correction  
34 shall award a prisoner credit against any term of reimprisonment for all  
35 time spent in custody as a result of revocation proceedings under G.S.  
36 15A-1368.6.
- 37 (4) The prisoner is eligible to receive earned time credit against the  
38 maximum prison term as provided in G.S. ~~15A-1340(d)~~ 15A-  
39 1340.13(d) for time served in prison after the revocation."

40  
41 PART 2. LENGTHS OF PROBATION PERIODS

42  
43 Sec. 6. G.S. 15A-1342(a) reads as rewritten:

1       "(a) Period. – The court may place a convicted offender on probation for the  
2 appropriate period as specified in G.S. 15A-1343.2(d), not to exceed a maximum of five  
3 years. The court may place a defendant as to whom prosecution has been deferred on  
4 probation for a maximum of two years. The probation remains conditional and subject  
5 to revocation during the period of probation imposed, unless terminated as provided in  
6 subsection (b) or G.S. 15A-1341(c).

7       Extension. – The court with the consent of the defendant may extend the period of  
8 probation beyond ~~five years~~ the original period (i) for the purpose of allowing the  
9 defendant to complete a program of restitution, or (ii) to allow the defendant to continue  
10 medical or psychiatric treatment ordered as a condition of the probation. The period of  
11 extension shall not exceed three years beyond the original period of probation. The  
12 special extension authorized herein may be ordered only in the last six months of the  
13 ~~probation term.~~ original period of probation. Any probationary judgment form provided  
14 to a defendant on supervised probation shall state that probation may be extended  
15 pursuant to this subsection."

16           Sec. 7. G.S. 15A-1351(a) reads as rewritten:

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

1 In imposing a sentence of special probation, the judge may credit any time spent  
2 committed or confined, as a result of the charge, to either the suspended sentence or to  
3 the imprisonment required for special probation. The original period of probation,  
4 including the period of imprisonment required for special probation, shall be as  
5 specified in G.S. 15A-1343.2(d), but may not exceed a maximum of five years, except  
6 as provided by G.S. 15A-1342(a). The court may revoke, modify, or terminate special  
7 probation as otherwise provided for probationary sentences."

8 Sec. 8. G.S. 15A-1343.2(d) reads as rewritten:

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

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

21 If the court finds at the time of sentencing that a longer period of probation is necessary,  
22 that period may not exceed a maximum of five years, as specified in G.S. 15A-1342 and  
23 G.S. 15A-1351.

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

29  
30 PART 3. EXTEND LENGTH OF CONFINEMENT ON SPECIAL PROBATION FOR  
31 SENTENCES TO IMPACT

32  
33 Sec. 9. G.S. 15A-1344(e) reads as rewritten:

34 "(e) Special Probation in Response to Violation. – When a defendant has violated  
35 a condition of probation, the court may modify his probation to place him on special  
36 probation as provided in this subsection. In placing him on special probation, the court  
37 may continue or modify the conditions of his probation and in addition require that he  
38 submit to a period or periods of imprisonment, either continuous or noncontinuous, at  
39 whatever time or intervals within the period of probation the court determines. In  
40 addition to any other conditions of probation which the court may impose, the court  
41 shall impose, when imposing a period or periods of imprisonment as a condition of  
42 special probation, the condition that the defendant obey the Rules and Regulations of  
43 the Department of Correction governing conduct of inmates, and this condition shall  
44 apply to the defendant whether or not the court imposes it as a part of the written order.

1 If imprisonment is for continuous periods, the confinement may be in either the custody  
2 of the Department of Correction or a local confinement facility. Noncontinuous periods  
3 of imprisonment under special probation may only be served in a designated local  
4 confinement or treatment facility. Except for probationary sentences for impaired  
5 driving under G.S. ~~20-138.1~~, 20-138.1 and probationary sentences which include a  
6 period of imprisonment in the Intensive Motivational Program of Alternative  
7 Correctional Treatment (IMPACT) under G.S. 15A-1343(b1)(2a), the total of all  
8 periods of confinement imposed as an incident of special probation, but not including an  
9 activated suspended sentence, may not exceed six months or one fourth the maximum  
10 sentence of imprisonment imposed for the offense, whichever is less. For probationary  
11 sentences for impaired driving under G.S. 20-138.1, the total of all periods of  
12 confinement imposed as an incident of special probation, but not including an activated  
13 suspended sentence, shall not exceed one-fourth the maximum penalty allowed by law.  
14 For probationary sentences which include a period of imprisonment in the Intensive  
15 Motivational Program of Alternative Correctional Treatment (IMPACT) under G.S.  
16 15A-1343(b1)(2a), the total of all periods of confinement imposed as an incident of  
17 special probation, but not including an activated suspended sentence, shall not exceed  
18 six months or one-half the maximum term of the suspended sentence of imprisonment,  
19 whichever is less. No confinement other than an activated suspended sentence may be  
20 required beyond the period of probation or beyond two years of the time the special  
21 probation is imposed, whichever comes first."

22           Sec. 10. G.S. 15A-1351(a), as amended by Section 7 of this act, reads as  
23 rewritten:

24       "(a) The judge may sentence to special probation a defendant convicted of a  
25 criminal offense other than impaired driving under G.S. 20-138.1, if based on the  
26 defendant's prior record or conviction level as found pursuant to Article 81B of this  
27 Chapter, an intermediate punishment is authorized for the class of offense of which the  
28 defendant has been convicted. A defendant convicted of impaired driving under G.S.  
29 20-138.1 may also be sentenced to special probation. Under a sentence of special  
30 probation, the court may suspend the term of imprisonment and place the defendant on  
31 probation as provided in Article 82, Probation, and in addition require that the defendant  
32 submit to a period or periods of imprisonment in the custody of the Department of  
33 Correction or a designated local confinement or treatment facility at whatever time or  
34 intervals within the period of probation, consecutive or nonconsecutive, the court  
35 determines. In addition to any other conditions of probation which the court may  
36 impose, the court shall impose, when imposing a period or periods of imprisonment as a  
37 condition of special probation, the condition that the defendant obey the Rules and  
38 Regulations of the Department of Correction governing conduct of inmates, and this  
39 condition shall apply to the defendant whether or not the court imposes it as a part of the  
40 written order. If imprisonment is for continuous periods, the confinement may be in the  
41 custody of either the Department of Correction or a local confinement facility.  
42 Noncontinuous periods of imprisonment under special probation may only be served in  
43 a designated local confinement or treatment facility. Except for probationary sentences  
44 of impaired driving under G.S. ~~20-138.1~~, 20-138.1 and probationary sentences which

1 include a period of imprisonment in the Intensive Motivational Program of Alternative  
2 Correctional Treatment (IMPACT) under G.S. 15A-1343(b1)(2a), the total of all  
3 periods of confinement imposed as an incident of special probation, but not including an  
4 activated suspended sentence, may not exceed six months or one fourth the maximum  
5 sentence of imprisonment imposed for the offense, whichever is less, and no  
6 confinement other than an activated suspended sentence may be required beyond two  
7 years of conviction. For probationary sentences for impaired driving under G.S. 20-  
8 138.1, the total of all periods of confinement imposed as an incident of special  
9 probation, but not including an activated suspended sentence, shall not exceed one-  
10 fourth the maximum penalty allowed by law. For probationary sentences which include  
11 a period of imprisonment in the Intensive Motivational Program of Alternative  
12 Correctional Treatment (IMPACT) under G.S. 15A-1343(b1)(2a), the total of all  
13 periods of confinement imposed as an incident of special probation, but not including an  
14 activated suspended sentence, shall not exceed six months or one-half of the maximum  
15 term of the suspended sentence, whichever is less. In imposing a sentence of special  
16 probation, the judge may credit any time spent committed or confined, as a result of the  
17 charge, to either the suspended sentence or to the imprisonment required for special  
18 probation. The original period of probation, including the period of imprisonment  
19 required for special probation, shall be as specified in G.S. 15A-1343.2(d), but may not  
20 exceed a maximum of five years, except as provided by G.S. 15A-1342(a). The court  
21 may revoke, modify, or terminate special probation as otherwise provided for  
22 probationary sentences."  
23

#### 24 PART 4. COUNTING MULTIPLE PRIOR CONVICTIONS

25  
26 Sec. 11. G.S. 15A-1340.14(d) reads as rewritten:

27 "(d) Multiple Prior Convictions Obtained in One Court Week. – For purposes of  
28 determining the prior record level, if an offender is convicted of more than one offense  
29 in a single superior court during one calendar week, only the conviction for the offense  
30 with the highest point total is used. If an offender is convicted of more than one offense  
31 in a single session of district court, only one of the convictions is used."  
32

#### 33 PART 5. CLASSIFYING PRIOR MISDEMEANOR CONVICTIONS FROM OTHER 34 JURISDICTIONS

35  
36 Sec. 12. G.S. 15A-1340.14(e) reads as rewritten:

37 "(e) Classification of Prior Convictions From Other Jurisdictions. – Except as  
38 otherwise provided in this subsection, a conviction occurring in a jurisdiction other than  
39 North Carolina is classified as a Class I felony if the jurisdiction in which the offense  
40 occurred classifies the offense as a felony, or is classified as a Class 3 misdemeanor if  
41 the jurisdiction in which the offense occurred classifies the offense as a misdemeanor.  
42 If the offender proves by the preponderance of the evidence that an offense classified as  
43 a felony in the other jurisdiction is substantially similar to an offense that is a  
44 misdemeanor in North Carolina, the conviction is treated as a that class of misdemeanor

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

10  
11 PART 6. CONTINUANCE OF SENTENCING HEARING

12  
13 Sec. 13. G.S. 15A-1340.14(f) reads as rewritten:

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

- 16 (1) Stipulation of the parties.  
17 (2) An original or copy of the court record of the prior conviction.  
18 (3) A copy of records maintained by the Division of Criminal Information,  
19 the Division of Motor Vehicles, or of the Administrative Office of the  
20 Courts.  
21 (4) Any other method found by the court to be reliable.

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

41 Sec. 13.1. G.S. 15A-1340.21(c) reads as rewritten:

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

- 44 (1) Stipulation of the parties.



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

6 The State bears the burden of proving, by a preponderance of the evidence, that a  
 7 prior conviction exists and that the offender before the court is the same person as the  
 8 offender named in the prior conviction. The original or a copy of the court records or a  
 9 copy of the records maintained by the Division of Criminal Information, the Division of  
 10 Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as  
 11 that by which the offender is charged, is **prima facie** evidence that the offender named  
 12 is the same person as the offender before the court, and that the facts set out in the  
 13 record are true. For purposes of this subsection, 'copy' includes a paper writing  
 14 containing a reproduction of a record maintained electronically on a computer or other  
 15 data processing equipment, and a document produced by a facsimile machine. Evidence  
 16 presented by either party at trial may be utilized to prove prior convictions. Suppression  
 17 of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that  
 18 section during the sentencing stage of the criminal action, ~~either the State or the offender is~~  
 19 entitled to the court may grant a continuance of the sentencing hearing."  
 20

## 21 PART 7. REVISE COMMUNITY PENALTIES ELIGIBILITY CRITERIA

22  
 23 Sec. 14. G.S 7A-771 reads as rewritten:

### 24 "§ 7A-771. Definitions.

25 As used in this Article:

- 26 (1) 'Community penalties program' means an agency within the judicial  
 27 district which shall (i) prepare community penalty plans; (ii) arrange or  
 28 contract with public and private agencies for necessary services for  
 29 offenders; and (iii) monitor the progress of offenders placed on  
 30 community penalty plans.  
 31 (2) 'Community penalty plan' means a plan presented in writing to the  
 32 sentencing judge which provides a detailed description of the targeted  
 33 offender's proposed community penalty.  
 34 (2a) 'Director' means the Director of the Administrative Office of the  
 35 Courts.  
 36 (3) 'Judicial district' means a district court district as defined in G.S. 7A-  
 37 133.  
 38 (4) Repealed by Session Laws 1991, c. 566, s. 4, effective July 1, 1991.  
 39 (5) 'Targeted offenders' means persons convicted of ~~misdemeanors, Class~~  
 40 ~~H felonies other than involuntary manslaughter, or Class I or J~~  
 41 ~~felonies, who would be eligible for intensive probation or house arrest,~~  
 42 misdemeanors or felonies who are eligible to receive an intermediate  
 43 punishment based on their class of offense and prior record level and  
 44 who are facing an imminent and substantial threat of imprisonment."

1 Sec. 15. G.S. 7A-773 reads as rewritten:

2 **"§ 7A-773. Responsibilities of a community penalties program.**

3 A community penalties program shall be responsible for:

- 4 (1) Targeting offenders who are eligible to receive an intermediate  
5 punishment based on their class of offense and prior record level and  
6 who face an imminent and substantial threat of imprisonment.  
7 (2) Preparing detailed community penalty plans for presentation to the  
8 sentencing judge by the offender's attorney.  
9 (3) Contracting or arranging with public or private agencies for services  
10 described in the community penalty plan.  
11 (4) Monitoring the progress of offenders under community penalty plans."  
12

13 PART 8. REVISE HABITUAL FELON LAW

14  
15 Sec. 16. G.S. 14-7.6 reads as rewritten:

16 **"§ 14-7.6. Sentencing of habitual felons.**

17 When an habitual felon as defined in this Article commits any felony under the laws  
18 of the State of North Carolina, the felon must, upon conviction or plea of guilty under  
19 indictment as provided in this Article (except where ~~the death penalty or a sentence of life~~  
20 ~~imprisonment is imposed~~) the felon has been sentenced as a Class A, B1, or B2 felon be  
21 sentenced as a Class C felon. In determining the prior record level, convictions used to  
22 establish a person's status as an habitual felon shall not be used. Sentences imposed  
23 under this Article shall run consecutively with and shall commence at the expiration of  
24 any sentence being served by the person sentenced under this section."  
25

26 PART 9. PUNISH FAILURE TO COMPLY WITH CONTROL CONDITIONS BY  
27 PERSONS WITH COMMUNICABLE DISEASES

28  
29 Sec. 17. G.S. 15A-1340.10 reads as rewritten:

30 **"§ 15A-1340.10. Applicability of structured sentencing.**

31 This Article applies to criminal offenses in North Carolina, other than impaired  
32 driving under G.S. 20-138.1 and failure to comply with control measures under G.S.  
33 130A-25, that occur on or after October 1, 1994. This Article does not apply to violent  
34 habitual felons sentenced under Article 2B of Chapter 14 of the General Statutes."  
35

36 Sec. 18. G.S. 130A-25 reads as rewritten:

37 **"§ 130A-25. Misdemeanor.**

38 (a) A person who violates a provision of this Chapter or the rules adopted by the  
39 Commission or a local board of health shall be guilty of a ~~Class 4~~ misdemeanor.

40 (b) A person convicted under this section ~~for failure to obtain the treatment required~~  
41 ~~by Part 3 or Part 5 of Article 6 of this Chapter, or for violation of G.S. 130A-144(f) or G.S.~~  
42 130A-145 shall not be sentenced under Article 81B of Chapter 15A of the General  
43 Statutes but shall instead be sentenced to a term of imprisonment of no more than two  
44 years and shall serve any prison sentence in McCain Hospital, Division of Prisons,  
Department of Correction, McCain, North Carolina; the North Carolina Correctional

1 Center for Women, Division of Prisons, Department of Correction, Raleigh, North  
2 Carolina; or any other confinement facility designated for this purpose by the Secretary  
3 of Correction after consultation with the State Health Director. The Secretary of  
4 Correction shall consult with the State Health Director concerning the medical  
5 management of these persons.

6 (c) Notwithstanding G.S. 148-4.1, G.S. 148-13, or any other contrary provision  
7 of law, a person imprisoned for failure to obtain the treatment required by Part 3 or Part 5 of  
8 ~~Article 6 of this Chapter, or for violation of G.S. 130A-144(f) or G.S. 130A-145~~ shall not  
9 be released prior to the completion of the person's term of imprisonment unless and  
10 until a determination has been made by the District Court that release of the person  
11 would not create a danger to the public health. This determination shall be made only  
12 after the medical consultant of the confinement facility and the State Health Director, in  
13 consultation with the local health director of the person's county of residence, have  
14 made recommendations to the Court."

15  
16 PART 10. CLASSIFY CERTAIN OFFENSES

17  
18 Sec. 19. G.S 7A-456 reads as rewritten:

19 **"§ 7A-456. False statements; penalty.**

20 (a) A false material statement made by a person under oath or affirmation in  
21 regard to the question of his indigency constitutes ~~perjury, and upon conviction thereof, the~~  
22 ~~defendant may be punished as provided in G.S. 14-209—a Class I felony.~~

23 (b) A judicial official making the determination of indigency shall notify the  
24 person of the provisions of subsection (a) of this ~~section and shall explain to him the~~  
25 ~~meaning of and the consequences of committing the crime of perjury.~~ section.

26 (c) Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1100, s. 11.1."

27 Sec. 20. G.S. 14-253 reads as rewritten:

28 **"§ 14-253. Failure of certain railroad officers to account with successors.**

29 If the president and directors of any railroad company, and any person acting under  
30 them, shall, upon demand, fail or refuse to account with the president and directors  
31 elected or appointed to succeed them, and to transfer to them forthwith all the money,  
32 books, papers, choses in action, property and effects of every kind and description  
33 belonging to such company, they shall be guilty of a Class I felony. ~~All persons~~  
34 ~~conspiring with any such president, directors or their agents to defeat, delay or hinder the~~  
35 ~~execution of this section shall be guilty of a Class 1 misdemeanor.~~—The Governor is hereby  
36 authorized, at the request of the president, directors and other officers of any railroad  
37 company, to make requisition upon the governor of any other state for the apprehension  
38 of any such president failing to comply with this section."

39 Sec. 21. G.S. 14-277.4(b) reads as rewritten:

40 "(b) No person shall injure ~~or attempt~~ or threaten to injure a person who is or has  
41 been:

- 42 (1) Obtaining health care services;
- 43 (2) Lawfully aiding another to obtain health care services; or
- 44 (3) Providing health care services."

1           Sec. 22. G.S. 54C-64 reads as rewritten:

2 **"§ 54C-64. Prohibited practices.**

3           A person who engages in any of the following acts or practices is guilty of a Class 1  
4 ~~misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, in the~~  
5 ~~discretion of the court: misdemeanor:~~

6           (1) Defamation: Making, publishing, disseminating, or circulating,  
7           directly or indirectly, or aiding, abetting, or encouraging the making,  
8           publishing, disseminating, or circulating of any oral, written, or printed  
9           statement that is false regarding the financial condition of any savings  
10          bank.

11          (2) False information and advertising: Making, publishing, disseminating,  
12          circulating, or otherwise placing before the public in any publication,  
13          media, notice, pamphlet, letter, poster, or any other way, an  
14          advertisement, announcement, or statement containing any assertion,  
15          representation, or statement with respect to the savings bank business  
16          or with respect to any person in the conduct of the savings bank  
17          business that is untrue, deceptive, or misleading.

18          (3) Misleading advertising: Use of a name or designation by a savings  
19          bank in advertisements, announcements, or statements concerning the  
20          savings bank that does not include the words 'savings bank' and the  
21          designation 'SSB' in type that is equally prominent with the other terms  
22          in the name or designation of the savings bank."

23          Sec. 23. G.S. 58-2-180 reads as rewritten:

24 **"§ 58-2-180. Punishment for making false statement.**

25          If any person in any financial or other statement required by this Chapter willfully  
26          misstates information, that person making oath to or subscribing the statement is guilty  
27          of ~~perjury under G.S. 14-209; a Class I felony;~~ and the entity on whose behalf the person  
28          made the oath or subscribed the statement is subject to a fine imposed by the court of  
29          not less than two thousand dollars (\$2,000) nor more than ten thousand dollars  
30          (\$10,000)."

31          Sec. 24. G.S. 58-8-1 reads as rewritten:

32 **"§ 58-8-1. Mutual insurance companies organized; requisites for doing business.**

33          No policy may be issued by a mutual company until the president and the secretary  
34          of the company have certified under oath that every subscription for insurance in the list  
35          presented to the Commissioner for approval is genuine, and made with an agreement  
36          with every subscriber for insurance that he will take the policies subscribed for by him  
37          within 30 days after the granting of a license to the company by the Commissioner to  
38          issue policies. Any person making a false oath in respect to the certificate is guilty of  
39          ~~perjury under G.S. 14-209; a Class I felony.~~"

40          Sec. 25. G.S. 58-24-180(d) reads as rewritten:

41          "(d) Any person violating the provisions of G.S. 58-24-65 shall be guilty of a  
42          ~~felony, and upon conviction shall be liable to a fine of not more than fifteen thousand~~  
43          ~~dollars (\$15,000), or to imprisonment for not more than five years, or to both fine and~~  
44          ~~imprisonment. Class I felony.~~"

1           Sec. 26. G.S. 74E-13(a) reads as rewritten:

2           "(a) No private person, firm, association, or corporation, and no public institution,  
3 agency, or other entity shall engage in, perform any services as, or in any way hold  
4 itself out as a company police agency or engage in the recruitment or hiring of company  
5 police officers without having first complied with the provisions of this Chapter. Any  
6 person, firm, association, or corporation, or their agents and employees violating any of  
7 the provisions of this Chapter shall be guilty of a ~~misdemeanor and punishable by a fine,~~  
8 ~~imprisonment for a term not to exceed two years, or both, in the discretion of the court. Class 1~~  
9 misdemeanor."

10           Sec. 27. G.S. 77-57(b) reads as rewritten:

11           "(b) Violation of any regulation of the Commission commanding or prohibiting an  
12 act shall be a ~~misdemeanor punishable by a fine not to exceed two hundred dollars~~  
13 ~~(\$200.00) or imprisonment for not more than 30 days. Class 3 misdemeanor.~~"

14           Sec. 28. G.S. 90-210.70(b) reads as rewritten:

15           "(b) Any person who willfully violates any other provision of this Article shall be  
16 guilty of a ~~misdemeanor and shall be fined not less than five hundred dollars (\$500.00),~~  
17 ~~or shall be imprisoned for not less than 30 days nor more than two years, or both. Class~~  
18 1 misdemeanor. Each such violation shall constitute a separate offense and may be  
19 prosecuted individually."  
20

## 21 PART 11. REPEAL CERTAIN OFFENSES

22           Sec. 29. The following statutes which contain felony offenses are repealed:

23           (1) G.S. 14-20. Killing adversary in duel; aiders and abettors declared  
24 accessories.  
25

26           (2) G.S. 14-43. Abduction of married women.

27           Sec. 30. The following statutes which contain misdemeanor offenses are  
28 repealed:

29           (1) G.S. 14-111.1. Obtaining ambulance services without intending to pay  
30 therefor - Buncombe, Haywood, and Madison Counties.

31           (2) G.S. 14-111.2. Obtaining ambulance services without intending to pay  
32 therefor - certain named counties.

33           (3) G.S. 14-116. Fraudulent entry of horses at fairs.

34           (4) G.S. 14-133. Erecting artificial islands and lumps in public waters.

35           (5) G.S. 14-140. Certain fires to be guarded by watchman.

36           (6) G.S. 14-170. "Rental battery" defined; identification of rental storage  
37 batteries.

38           (7) G.S. 14-171. Defacing word "rental" prohibited.

39           (8) G.S. 14-172. Sale, etc., of rental battery prohibited.

40           (9) G.S. 14-173. Repairing another's rental battery prohibited.

41           (10) G.S. 14-174. Time limit on possession of rental battery without  
42 written consent.

43           (11) G.S. 14-175. Violation made misdemeanor.

- 1 (12) G.S. 14-176. Rebuilding storage batteries out of old parts and sale of,  
2 regulated.
- 3 (13) G.S. 14-195. Using profane or indecent language on passenger trains.
- 4 (14) G.S. 14-222. Refusal of witness to appear or to testify in  
5 investigations of lynchings.
- 6 (15) G.S. 14-310. Dance marathons and walkathons prohibited.
- 7 (16) G.S. 14-311. Penalty for violation.
- 8 (17) G.S. 14-312. Each day made separate offense.
- 9 (18) G.S. 14-356. Conspiring to blacklist employees.
- 10 (19) G.S. 14-389. Sale of Jamaica ginger.
- 11 (20) G.S. 14-396. Dogs on "Capitol Square" worrying squirrels.
- 12 (21) G.S. 14-397. Use of name of denominational college in connection  
13 with dance hall.

14 Sec. 31. G.S. 14-32.1 reads as rewritten:

15 **"§ 14-32.1. Assaults on handicapped persons; punishments.**

16 (a) For purposes of this section, a 'handicapped person' is a person who has:

- 17 (1) A physical or mental disability, such as decreased use of arms or legs,  
18 blindness, deafness, mental retardation or mental illness; or  
19 (2) Infirmity

20 which would substantially impair that person's ability to defend himself.

21 ~~(b) Any person who assaults a handicapped person with a deadly weapon with  
22 intent to kill and inflicts serious injury is guilty of a Class C felony.~~

23 ~~(c) Any person who assaults a handicapped person with a deadly weapon and  
24 inflicts serious injury is guilty of a Class E felony.~~

25 ~~(d) Any person who assaults a handicapped person with a deadly weapon with  
26 intent to kill is guilty of a Class E felony.~~

27 (e) Unless his conduct is covered under some other provision of law providing  
28 greater punishment, any person who commits any aggravated assault or assault and  
29 battery on a handicapped person is guilty of a Class F felony. A person commits an  
30 aggravated assault or assault and battery upon a handicapped person if, in the course of  
31 the assault or assault and battery, that person:

- 32 (1) Uses a deadly weapon or other means of force likely to inflict serious  
33 injury or serious damage to a handicapped person; or  
34 (2) Inflicts serious injury or serious damage to a handicapped person; or  
35 (3) Intends to kill a handicapped person.

36 (f) Any person who commits a simple assault or battery upon a handicapped  
37 person is guilty of a Class 1 misdemeanor."

38 Sec. 32. Section 3 of Chapter 1005 of the 1991 Session Laws reads as  
39 rewritten:

40 "Sec. 3. This act is effective upon ratification and expires September 1, ~~1994.~~ 1995."

41 Sec. 33. Sections 13 and 32 of this act are effective upon ratification. The  
42 remaining sections of this act become effective October 1, 1994. Prosecution for, or  
43 sentences based on, offenses occurring before the effective date of this act are not  
44 abated or affected by the repeal or amendment in this act of any statute, and the statutes

- 1 that would be applicable to those prosecutions or sentences but for the provisions of this
- 2 act remain applicable to those prosecutions or sentences.