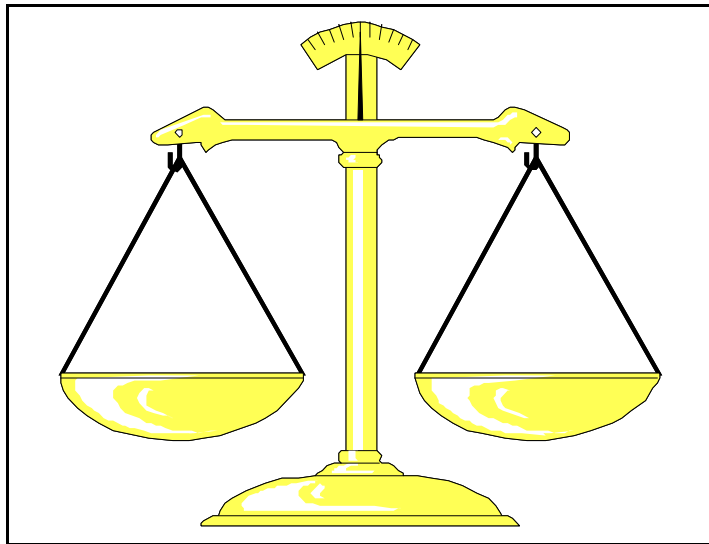


**NORTH CAROLINA  
SENTENCING  
AND  
POLICY ADVISORY  
COMMISSION**



***STUDY OF HOUSE BILL 642:  
JUSTICE REINVESTMENT ACT***

***JUNE 2011***

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*Research & Policy Associate*

**Vicky Etheridge**  
*Administrative Assistant*

**P.O. Box 2448  
Raleigh, NC 27602  
(919) 890-1470**

**<http://www.nccourts.org/courts/crs/councils/spac>**

# **NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

## **STUDY OF HOUSE BILL 642: JUSTICE REINVESTMENT ACT**

**June 3, 2011**

On April 26, 2011, State Senators Fletcher Hartsell, Jr. (36<sup>th</sup> Senatorial District) and Floyd McKissick, Jr. (20<sup>th</sup> Senatorial District) asked the Sentencing and Policy Advisory Commission to undertake a study of House Bill 642, the Justice Reinvestment Act. (See letter in Appendix) The Senators asked the Commission to study the impact of the bill on the State's criminal justice and corrections systems and to identify any potential legal and practical problems its implementation might present. They asked for a response from the Commission by June 15, 2011.

Due to the time constraint, Chairman Spainhour presented the letter to the Legislative Review Subcommittee at its May 6, 2011, meeting and asked the Subcommittee to conduct a preliminary study subject to adoption by the Commission at its meeting on June 3, 2011. The Subcommittee voted to accept the request and undertake a substantive study of the bill.

The members of the Subcommittee reviewed each provision of House Bill 642 (2<sup>nd</sup> Edition). Staff identified potential legal, policy, and practical issues raised by the provision, explained the potential impact of the provision, and listed possible options for addressing the potential issues. The members of the Subcommittee then discussed each provision in detail, making corresponding changes to the materials prepared by staff. The Subcommittee adopted the findings and instructed the staff to compile them into a final report.

The Subcommittee presented its report to the Sentencing Commission at its meeting on June 3, 2011. Staff reviewed the findings as well as changes made to the bill after the Subcommittee's meeting on May 6. The members of the Commission discussed the findings and recommended some changes. The Sentencing Commission then adopted the report as amended.

This report summarizes the findings of the Sentencing and Policy Advisory Commission in response to the request from Senators Hartsell and McKissick. The report is not recommending any particular options identified by the Commission, nor does it imply the Commission's support for or opposition to House Bill 642 itself.

## **PART I. STRENGTHEN PROBATION SUPERVISION**

### ***Sections 1(a), (b), and (c) (community and intermediate punishments)***

#### Description

These sections redefine community and intermediate punishments.

1. They remove the requirement that an intermediate punishment include at least one of the six restrictive conditions listed.
2. They allow the judge to impose any condition of probation as a community or intermediate punishment (except drug treatment court, which is limited to an intermediate punishment).
3. They authorize the judge to impose up to six days per month (in two-day or three-day increments for no more than three months) in the local jail as a new condition of probation (this is separate from a split sentence).

These changes apply to felony and misdemeanor offenses committed on or after December 1, 2011.

#### Impact

FY 2009/10 Data:

- Felony convictions: 16% community, 44% intermediate, 40% active punishment.
- Misdemeanor convictions: 72% community, 3% intermediate, 25% active punishment.
- There are about 106,000 offenders currently on probation.
- 41% of felony and 56% of misdemeanor admissions to prison result from revocation for a technical violation of probation.

Savings/Cost: See Fiscal Note.

Timing: Within about six months after the effective date.

#### Legal and Policy Issues

Structured sentencing is a “just deserts” model, punishing the offender for the act. This changes the focus of the community and intermediate punishments from punishment to rehabilitation, to reducing the risk of reoffending in the future.

Currently, the sanction imposed is based on the seriousness of the offense and the offender’s prior record. This would separate the sanction from that foundation without giving it a new basis; the judge does not have any additional information at the time of sentencing.

Authorizing special probation (split sentence) and up to six days per month in jail as conditions of a community punishment would place first-time and low-level misdemeanor offenders in jail beds, an expensive and limited correctional resource.

The more sentencing options that are available, the greater the potential is for disparity in sentencing between similar offenders who commit similar offenses.

#### Practical Issues

The following would have to occur by the effective date:

The School of Government or another entity would have to train court officials in the new sentencing policies.

The Administrative Office of the Courts would have to revise court forms to reflect the statutory changes.

The Administrative Office of the Courts and the Department of Correction would have to modify data collection programs to reflect the changes to the law and to capture the additional elements.

### Options

Authorize special probation (split sentence) as a condition of an intermediate punishment only.

*Commentary:* It is currently available as an intermediate punishment only. If it is made available for offenders sentenced to a community punishment, it may be used for first-time and low-level misdemeanor offenders, resulting in jail beds being used for low-risk offenders and in jail overcrowding.

Allow the judge to impose the condition of serving up to six days per month in the local jail only as a modification of the sentence upon the finding of a violation of probation.

*Commentary:* The judge has the authority to impose special probation (split sentence) as a condition of probation at the time of sentencing. It is for a definite period or periods. The proposed condition, if imposed at the time of sentencing, could result in offenders being incarcerated for several days each month for the entire period of probation (up to five years) which could exceed the amount of time an offender could be incarcerated on special probation. The judge might impose this condition along with special probation, further increasing the time an offender would serve in prison while on probation. It may be used for first-time and low-level misdemeanor offenders, resulting in jail beds being used for low-risk offenders and in jail overcrowding.

### ***Sections 1(d) and (e) (delegated authority)***

#### Description

These sections expand authorities delegated to probation officers.

1. They give the probation officer the authority to impose conditions statutorily defined as conditions of probation, including up to six days per month (in two-day or three-day increments for no more than three months) in the local jail.
2. The officer may exercise these authorities in two situations:
  - (a) If the officer determines that the offender has failed to comply with one or more conditions of probation imposed by the court; or
  - (b) If the Department finds the offender to be high risk based on the results of the risk assessment.

The officer may only impose the condition of up to six days per month in the local jail if the officer determines that the offender has failed to comply with one or more conditions of probation imposed by the court.

3. The offender has a right to court review of the action taken but may waive that right.

This change applies to felony and misdemeanor offenses committed on or after December 1, 2011.

#### Impact

FY 2009/10 Data: No data available.

Savings/Cost: See Fiscal Note.

Timing: Within about six months after the effective date.

### Legal and Policy Issues

This change raises constitutional due process questions surrounding the imposition of a jail term where the offender agrees to waive the right to counsel and to a hearing before an impartial decision maker.

This change raises a constitutional separation of powers question as to whether an executive branch officer (the probation officer) can exercise a judicial branch power (imposing sanctions).

The probation officer is given the same authorities for dealing with offenders who violate their conditions of probation as for supervising offenders who are determined to be high risk but who have not violated their conditions of probation.

The judge is not involved in the process of imposing and removing statutorily-defined punishments.

There is no single authority overseeing how the offender is punished and supervised. The judge imposes a sentence and then the probation officer imposes additional sanctions.

It is not clear whether the probation officer is authorized to require the offender to pay the appropriate fees for certain sanctions.

### Practical Issues

The following would have to occur by the effective date:

The Department of Correction would have to develop policies and procedures for this process.

The Department of Correction or another entity would have to train probation officers in using the new delegated authorities.

The Administrative Office of the Courts and the Department of Correction would have to modify data collection programs to reflect the changes to the law and to capture the additional elements.

### Options

None identified.

### ***Section 1(f) (risk assessment instrument)***

#### Description

This section requires the Department of Correction to use a validated instrument to assess each probationer for risk of reoffending and to place the probationer in the appropriate supervision level.

This change applies to felony and misdemeanor offenses committed on or after December 1, 2011.

#### Impact



FY 2009/10 Data: DOC Community and Intermediate Probation Entries: 9% minimal risk, 24% low risk, 29% moderate risk, 22% high risk, 17% did not have an established risk level.

Savings/Cost: See Fiscal Note.

Timing: Within about six months after the effective date.

### Legal and Policy Issues

The determination of what constitutes “Minimal,” “Low,” “Moderate,” and “High” risk will affect how other portions of the bill are implemented.

### Practical Issues

The following would have to occur by the effective date:

The Department of Correction would have to develop policies and procedures for this process.

The Department of Correction would have to train probation officers in using the instrument.

The Department of Correction would have to modify its data collection program to reflect the changes to the law and to capture the additional elements.

### Options

The Department of Correction will have to continue to validate the instrument on a regular basis and adjust the definition of the risk levels based on empirical data.

*Commentary:* Changes in sentencing laws will produce changes in the factors that are used to predict risk. It will be necessary to update the instrument regularly to maintain a degree of accuracy.

## **PART II. POST-RELEASE SUPERVISION CHANGES**

### ***Sections 2(a) and (b) (post-release supervision)***

#### Description

These sections expand the eligible population for post-release supervision and increase the period of supervision.

1. They increase post-release supervision for Class B1 through E felons from nine months to twelve months.
2. They add nine months of post-release supervision for Class F through I felons.
3. Registered sex offenders in any felony class would continue to receive five years of post-release supervision.

These changes apply to felony offenses committed on or after December 1, 2011.

#### Impact

FY 2009/10 Data:

- 3,188 Class B1-E convictions with active sentences and 766 Class E convictions with non-active sentences.
- 9,250 Class F-I convictions with active sentences and 17,661 with non-active sentences.

Savings/Cost: See Fiscal Note.

Timing: About nine months (Class F-I) and about three years (Class B1-E) after the effective date.

### Legal and Policy Issues

The period of supervision following completion of the prison sentence may be longer than the minimum active sentence originally imposed for offenders in the lower classes.

### Practical Issues

The following would have to occur by the effective date:

The Department of Correction would have to develop policies and procedures for this process.

The School of Government or another entity would have to train post-release supervision officers and Post-Release Supervision and Parole Commission staff in the new policies.

The General Assembly may have to expand the Post-Release Supervision and Parole Commission staff.

The Department of Correction would have to modify its data collection program to reflect the changes to the law and to capture the additional elements.

### Options

Impose shorter periods of supervision for offenders in the lower classes.

*Commentary:* Offenders in Class I receive an average minimum sentence of seven months if an active sentence is imposed, in Class H, ten months. Taking into account credit for time served, some of these offenders may have served less time than they would be under supervision following the prison sentence. Given the short period of imprisonment, it may not be necessary to supervise them for as long as a Class F offender. Six-month and three-month periods could be required for offenders in the lower classes.

Make the level of supervision for offenders in the lower classes discretionary based on a risk assessment performed prior to leaving prison.

*Commentary:* Not all offenders leaving prison are high-risk offenders. A risk assessment could be used to determine how much supervision the offender needs (like the process used with probationers). Re-entry services could be voluntary.

### ***Sections 2(e) and (f) (revocation of post-release supervision)***

#### Description

These sections expand and increase the period of imprisonment that is available upon revocation of post-release supervision.

1. They increase the period of imprisonment for Class B1 through E felons from nine months to twelve months.
2. They add nine months of imprisonment for Class F through I felons.
3. Registered sex offenders would receive nine or twelve months of imprisonment, depending upon the class of their offense.

These changes apply to felony offenses committed on or after December 1, 2011.

### Impact

FY 2009/10 Data:

- 3,188 Class B1-E convictions with active sentences and 766 Class E convictions with non-active sentences.
- 9,250 Class F-I convictions with active sentences and 17,661 with non-active sentences.

Savings/Cost: See Fiscal Note.

Timing: About nine months (Class F-I) and about three years (Class B1-E) after the effective date.

### Legal and Policy Issues

The period of imprisonment imposed for a violation of post-release supervision may be longer than the minimum active sentence originally imposed for offenders in the lower classes.

It is not clear how this provision would affect sentences for offenders convicted of drug trafficking under G.S. 90-95(h) since they are sentenced under the Structured Sentencing Act but their maximum sentences are set by a separate statute.

### Practical Issues

The following would have to occur by the effective date:

The Department of Correction would have to develop policies and procedures for this process.

The Administrative Office of the Courts and the Department of Correction would have to modify their data collection programs to reflect the changes to the law and to capture the additional elements.

### Options

The period of imprisonment can be set at an amount different from the period of supervision.

*Commentary:* The period of imprisonment is not connected to the period of supervision. It can be set at any length that is determined to be appropriate for enforcing the conditions of post-release supervision. It is similar to an offender on probation where the suspended sentence is shorter than the period of probation.

### ***Section 2(d) (period of imprisonment)***

#### Description

This section limits the period of imprisonment that can be imposed for a technical violation of the conditions of post-release supervision.

1. An offender can be sent to prison for 90 days at a time, the sum of which cannot exceed their period of imprisonment, for violations of the conditions of post-release supervision other than committing a new crime or absconding.

This change applies to felony offenses committed on or after December 1, 2011.

### Legal and Policy Issues

Other than for committing a new crime or absconding, the Post-Release Supervision and Parole Commission cannot require the offender to serve the entire period of imprisonment at one time for a violation of the conditions of post-release supervision.

### Impact

FY 2009/10 Data:

- 3,188 Class B1-E convictions with active sentences and 766 Class E convictions with non-active sentences.
- 9,250 Class F-I convictions with active sentences and 17,661 with non-active sentences.

Savings/Cost: See Fiscal Note.

Timing: About nine months (Class F-I) and about three years (Class B1-E) after the effective date.

### Practical Issues

The following would have to occur by the effective date:

The Department of Correction would have to develop policies and procedures for this process.

The School of Government or another entity would have to train post-release supervision officers and Post-Release Supervision and Parole Commission staff in the new policies.

The Department of Correction would have to modify its data collection program to reflect the changes to the law and to capture the additional elements.

### Options

Allow the Post-Release Supervision and Parole Commission to impose the entire period of imprisonment for violations of other conditions.

*Commentary:* The Post-Release Supervision and Parole Commission may determine that there are other conditions that are as serious as committing a new crime and absconding. These conditions should be added to the exception so that the Commission can impose the entire period of imprisonment for certain violations.

Give the Post-Release Supervision and Parole Commission the discretion to impose the entire period of imprisonment for violations of conditions but require that it develop policies for using that discretion that would preserve the intent of the original recommendation.

*Commentary:* The Post-Release Supervision and Parole Commission may determine that imposing the entire period of imprisonment in a certain situation would better serve public safety than it would in another situation. Limiting that discretion by statute prevents the Commission from making such decisions. The Commission would have policies in place that would preserve the idea of using short periods of incarceration for most violations of conditions.

## **PART III. STATUS OFFENSE OF HABITUAL BREAKING AND ENTERING**

### ***Section 3(a) (habitual breaking and entering)***

#### Description

This section creates a new status offense.

1. On the second “breaking and entering” offense, the offender may be sentenced as a Class E felon.
2. “Breaking and Entering” offenses include first degree burglary and breaking out of dwelling house burglary (Class D), second degree burglary and breaking or entering a

building that is a place of religious worship (Class G), and breaking or entering buildings generally (Class H).

This change applies to felony offenses committed on or after December 1, 2011.

#### Impact

FY 2009/10 Data: 3,255 convictions for breaking and entering offenses for offenders 18 years of age or older at offense; 2,296 with 2 or more prior record points.

Savings/Costs: See Fiscal Note.

Timing: Within about six months after the effective date.

#### Legal and Policy Issues

Increasing the offense class for the second time an offender commits an offense devalues the harm caused by the first offense.

Increasing the offense class for the second (and third) violation of breaking or entering buildings generally (Class H) can make the punishment more serious than a second degree burglary offense (Class G) that is not enhanced.

Because it has to be charged in addition to the underlying offense, it increases the potential for disparity in sentencing between similar offenders who commit similar offenses.

#### Practical Issues

The following would have to occur by the effective date:

The School of Government or another entity would have to train court officials in the new sentencing policies.

The Administrative Office of the Courts would have to revise court forms to reflect the statutory changes.

The Administrative Office of the Courts and the Department of Correction would have to modify data collection programs to reflect the changes to the law and to capture the additional elements.

#### Options

Change the definition of burglary to remove the requirement that it be committed at nighttime.

*Commentary:* Currently, first and second degree burglary (Class D and G) address an offender who breaks and enters a dwelling at night with the intent to commit any felony or larceny therein. If the offense occurs during the day, the offender can only be charged with breaking or entering buildings generally (Class H). If the issue is punishment of offenders who break into homes during the daytime, removing the nighttime requirement would allow an offender who breaks into a home to be charged with first or second degree burglary regardless of what time of day the offense occurred.

Review the classification of the offense of breaking or entering buildings generally.

*Commentary:* Breaking or entering buildings generally is a Class H felony. The felony punishment chart increases the punishment based on the seriousness of the offender's prior record. If that increase is insufficient punishment for second and subsequent

offenders, then the classification should be reviewed to determine if it is too low, keeping in mind the classification for first and second degree burglary.

### ***Sections 3(b) and (c) (habitual felon)***

#### Description

These sections change the punishment for the habitual felon offenses.

1. They change the punishment for habitual felons from Class C to four classes higher than the underlying offense but in no case higher than Class C.

This change applies to felony offenses committed on or after December 1, 2011.

#### Impact

FY 2009/10 Data: 734 habitual felon convictions; 325 had a conviction for a Class H offense and 116 had a conviction for a Class I offense as their most serious underlying conviction.

Savings/Costs: See Fiscal Note.

Timing: Three to four years after the effective date.

#### Legal and Policy Issues

None identified.

#### Practical Issues

The following would have to occur by the effective date:

The School of Government or another entity would have to train court officials in the new sentencing policies.

#### Options

None identified.

## **PART IV. LIMIT TIME/CERTAIN VIOLATIONS OF PROBATION**

### ***Sections 4(a), (b), and (c) (period of imprisonment)***

#### Description

These sections limit the time an offender may serve for the first two technical violations of probation.

1. The court can revoke probation if the offender commits a new crime or absconds. The court cannot revoke probation for the first two violations of any of the other conditions of probation.
2. The court can impose a 90 day period of confinement each of the first two times the offender violates any other condition of probation.
3. Upon the third violation of any other condition of probation, the court can revoke probation and impose the suspended sentence.

This change applies to felony and misdemeanor probation violations where the violation occurs on or after December 1, 2011.

#### Impact

FY 2009/10 Data:

- About 106,000 offenders currently on probation.

- 41% of felony and 56% of misdemeanor admissions to prison result from technical revocation of probation.

Savings/Cost: See Fiscal Note.

Timing: Soon after effective date.

### Legal and Policy Issues

The court cannot require the offender to serve the suspended sentence for a violation of the conditions of probation other than committing a new crime or absconding.

It is not clear whether the offender has a right to appeal the sentence modification (from District Court to Superior Court and from Superior Court to the Court of Appeals) since it is not a revocation or imposition of special probation.

### Practical Issues

The following would have to occur by the effective date:

The Department of Correction would have to revise prison intake and release policies and procedures.

The School of Government or another entity would have to train court officials and probation officers in the new violation policies.

The Administrative Office of the Courts would have to revise court forms to reflect the statutory changes.

The Administrative Office of the Courts and the Department of Correction would have to modify data collection programs to reflect the changes to the law and to capture the additional elements.

### Options

Require a shorter period of imprisonment for misdemeanants or make the period *up to* 90 days for misdemeanants.

*Commentary:* Misdemeanants receive an average sentence of less than 90 days. This option would result in them being imprisoned one time for a technical violation; it would defeat the purpose of short dips in jail followed by continued supervision. Requiring shorter periods in the statute or allowing the judge to impose shorter periods would be more consistent with the intent of the change.

## **PART V. DIVERSION PROGRAM/FELONY DRUG POSSESSION**

### ***Sections 5(a) and (b) (diversion for possession of a controlled substance)***

#### Description

These sections expand the current conditional discharge program in G.S. 90-96.

1. They expand the pool of offenders eligible for the program to include all offenders convicted of felony possession of a controlled substance (eligibility was limited to felony possession of less than one gram of cocaine).

2. They change the prior criminal history limitation to no prior felony conviction (it was limited to no prior felony or misdemeanor convictions for an offense in selected articles of Chapter 90, The Controlled Substances Act).
3. They require the court to defer further proceedings and place the defendant in the program (it was discretionary with the court).

These changes apply to felony and misdemeanor offenders who enter a plea or are found guilty on or after January 1, 2012.

### Impact

FY 2009/10 Data:

3,239 convictions for felony drug possession offenses.

25,170 for misdemeanor drug possession convictions.

Savings/Cost: See Fiscal Note.

Timing: Immediately after effective date.

### Legal and Policy Issues

It is not clear how this proposal affects the conditional discharge program in G.S. 90-96(a1) that is available for offenders upon their first conviction of possession of a controlled substance.

### Practical Issues

The following would have to occur by the effective date:

The General Assembly would have to fund treatment programs and resources and they would have to be made available.

### Options

Make admission to the program a presumption which the judge can override based on certain findings.

*Commentary:* Currently, an offender can have one or more prior convictions and be eligible for the program as long as they are not convictions for the selected Articles of Chapter 90. The judge has the discretion to decide whether the prior convictions are relevant or not. Making diversion into the program presumptive would allow some offenders who have other prior convictions to enter the program but would retain the ability of the judge to exclude those who are not good candidates because of their prior record.

### ***Section 5(c) (advanced supervised release)***

#### Description

This section authorizes early supervised release from prison upon completion of certain programs.

1. It applies to offenders sentenced to an active sentence in Classes D through H, certain prior record levels.
2. The judge, in his or her discretion and without objection from the prosecutor, finds at sentencing that the offender will be eligible for one or more risk reduction incentives in prison.



3. If the offender is sentenced in a range other than the mitigated range and completes the risk reduction incentive in prison, he will be released onto advanced supervised release after serving a sentence equal to the shortest duration in the mitigated range.
4. If the offender is sentenced in the mitigated range and completes the risk reduction incentive in prison, he will be released onto advanced supervised release after serving a sentence equal to 80% of the mitigated sentence imposed.

This change applies to felony offenders who enter a plea or are found guilty on or after January 1, 2012.

#### Impact

FY 2009/10 Data: 8,222 convictions with active sentences in specified classes and prior record levels.

Savings/Cost: See Fiscal Note.

Timing: Within about six months after the effective date.

#### Legal and Policy Issues

It raises the question of whether advanced supervised release violates the principle of truth in sentencing since the offender will serve less than the minimum sentence imposed.

There are no criteria to guide the judge in determining who is an appropriate candidate for these incentives. The lack of criteria creates the potential for disparity in applying the incentives between similar offenders who commit similar offenses.

The judge may impose one or more incentives, yet each offender receives the same sentence reduction. This creates a disparity between offenders in the same program in the amount of credit they receive for completing that program.

It is not known what prison programs would qualify as risk reduction incentives and how they would differ from the current programs for which all offenders can earn time off of their maximum sentence.

The application of the program would have unintended consequences: high risk offenders who receive early release would serve less time than offenders who are low risk; low risk offenders who are found eligible would be using a resource they do not need.

It creates a potential problem with post-release supervision: the offender is released at the new (shorter) minimum sentence onto post-release supervision; however, he can be revoked for up to the time remaining on his original maximum sentence if he violates post-release supervision, which is longer than the nine or twelve months intended in Part II of the bill.

#### Practical Issues

The following would have to occur by the effective date:

The Department of Correction would have to develop the risk reduction programs and the related policies and procedures.

The General Assembly would have to fund the risk reduction programs.

The School of Government or another entity would have to train court officials and prison officials in the new policies.

The Administrative Office of the Courts would have to revise court forms to reflect the statutory changes.

The Administrative Office of the Courts and the Department of Correction would have to modify data collection programs to reflect the changes to the law and to capture the additional elements.

### Options

Increase the time between the minimum sentence and the maximum sentence (in lieu of advanced supervised release).

*Commentary:* Currently, the maximum sentence is 20% longer than the minimum sentence. An offender can earn that time off of the maximum sentence by participating in treatment, education, and rehabilitative programs. Increasing that percentage difference would allow the offender to earn more time off of his or her sentence by participating in additional programs, like the proposed risk reduction incentives. This would also make the programs available to all offenders who need them.

Use prior record score as a criterion for eligibility for a risk reduction program.

*Commentary:* Recidivism studies have shown a correlation between an offender's prior record and their risk of recidivism. Under Structured Sentencing, the prosecutor collects the prior record information for every offender and scores it. The judge has this information at time of sentencing and could use it as a guide to determine whether an offender would benefit from a risk reduction program or not.

## **PART VI. REFOCUS CRIMINAL JUSTICE PARTNERSHIP PROGRAM**

### ***Sections 6(a) and (b) (state-funded community-based corrections programs)***

#### Description

1. It repeals the State-County Criminal Justice Partnership Program.
2. It enacts the Treatment for Effective Community Supervision Program which authorizes the Department of Correction to contract directly with community-based corrections programs.

This change is effective July 1, 2011, and applies to felony and misdemeanor offenders.

#### Impact

FY 2009/10 Data: N/A.

Savings/Cost: See Fiscal Note.

Timing: July 1, 2011.

#### Legal and Policy Issues

This removes the role of the local officials, both in determining their needs and in monitoring the programs.

### Practical Issues

The following would have to occur by the effective date:  
The General Assembly would have to fund the program.

The Department of Correction would have to determine the needs of the counties and enter into contracts with providers.

### Options

None identified.

## **PART VII. MOST MISDEMEANANTS TO SERVE SENTENCES IN JAIL**

### *Sections 7(a) through (h) (misdemeanants moved to jails)*

#### Description

These sections move most misdemeanor offenders sentenced to an active sentence from prison to jail.

1. They require that a misdemeanor who is sentenced to a period of confinement of more than 90 days and up to 180 days be committed to the Statewide Misdemeanant Confinement Program. The Program finds space to house misdemeanants in participating local jails. If the participating local jails are full, the Department of Correction takes the offenders.
2. They establish the Statewide Misdemeanor Confinement Fund to reimburse local governments for expenses incurred in housing misdemeanants under the Program.
3. They do not apply to impaired driving offenses.

This change is effective January 1, 2012, and applies to misdemeanor offenders.

#### Impact

FY 2009/10 Data: About 1,500 misdemeanants currently in prison under Structured Sentencing; about 79% have a total sentence length of less than 6 months.

Savings/Cost: See Fiscal Note.

Timing: Immediately after effective date.

#### Legal and Policy Issues

None identified.

### Practical Issues

The following would have to occur by the effective date:  
Some counties would have to agree to participate in the Program.

The North Carolina Sheriffs' Association would have to determine overall jail capacity.

Reimbursement rates would have to be established.

### Options

Allow the counties to use house arrest with electronic monitoring on offenders who receive an active sentence of 180 days or less or who have a serious medical condition.

*Commentary:* If the counties are required to house more misdemeanants sentenced to an active sentence, the use of house arrest with electronic monitoring for some of the offenders, including those requiring medical treatment, would create space for the more serious misdemeanants who are currently housed in prison.

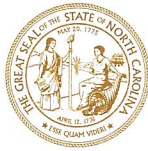
Study the idea of allowing the counties to provide services in the community to certain misdemeanants who are sentenced to an active sentence.

*Commentary:* The Department of Juvenile Justice and Delinquency Prevention is authorized to provide commitment services to certain juveniles who are committed to the Department in programs not located in a youth development center or detention facility. (G.S. 7B-2513(e)) The State should study developing a similar option for counties to use with misdemeanants.

## APPENDICES

LETTER FROM SENATORS HARTSELL AND MCKISSICK

SUMMARY OF POTENTIAL IMPACT OF HOUSE BILL 642 [2<sup>nd</sup> Edition]



North Carolina General Assembly  
Senate Chamber  
State Legislative Building  
Raleigh, NC 27601-2808

SENATOR FLOYD B. MCKISSICK, JR.  
20TH DISTRICT

April 26, 2011

Honorable W. Erwin Spainhour, Chairman  
North Carolina Sentencing and Policy Advisory Commission  
P.O. Box 2472  
Raleigh, NC 27602

**RE: House Bill # 642 – Commonly Known and Referred to as the Justice Reinvestment Act**

Dear Judge Spainhour,

We hereby request that the Sentencing Commission undertake a study of House Bill 642, Justice Reinvestment Act, which proposes a number of changes to the State's sentencing laws and criminal justice system. The North Carolina General Assembly welcomes the efforts of the Council of State Governments Justice Center to review the State's current criminal justice system, make changes where needed to improve our response to crime, and provide opportunities to save – and reinvest – resources whenever possible.

Under G.S. 164-43(a)(2), the Sentencing Commission has an ongoing mandate to evaluate the State's criminal justice and corrections systems and to formulate policy proposals and recommendations. We would like the Commission to study the impact of House Bill 642 on these systems, as well as any potential problems its implementation might present legally and practically. We are confident the Commission will draw on the diverse expertise of its membership to offer sound policy advice to the Legislature as we proceed on this promising initiative, and will follow a constructive approach in identifying problems and offering possible solutions. In view of the limited timeframe, a response by the Commission no later than June 15, 2011 would be greatly appreciated.

Thank you for considering our request.

Sincerely,

Handwritten signature of Fletcher L. Hartsell, Jr.

Fletcher L. Hartsell, Jr.  
36<sup>th</sup> Senatorial District

Handwritten signature of Floyd B. McKissick, Jr.

Floyd B. McKissick, Jr.  
20<sup>th</sup> Senatorial District

cc: Susan Katzenelson  
Executive Director  
North Carolina Sentencing and Policy Advisory Commission



**Summary of Potential Impact of House Bill 642 [2<sup>nd</sup> Edition]<sup>1,2</sup>**

<b>Provision</b>	<b>Impact</b>	<b>Considerations</b>																
<p><b>Part I. Strengthen Probation Supervision</b></p> <ul style="list-style-type: none"> <li>- Amends definitions of Community and Intermediate punishments</li> <li>- Amends conditions of probation</li> <li>- Amends delegation to probation officer in Community and Intermediate punishments</li> <li>- Requires the DOC to assess the risk level of each probationer using a validated instrument</li> <li>- Effective December 1, 2011, and applies to offenses committed on or after that date</li> </ul>	<p>Prison bed savings would occur if there is a net reduction in probation revocation rates for felons and misdemeanants (5% for Scenario 1, 10% for Scenario 2, 20% for Scenario 3):</p> <table border="0" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th></th> <th style="text-align: center;"><u>Year 1</u></th> <th style="text-align: center;"><u>Year 5</u></th> <th style="text-align: center;"><u>Year 10</u></th> </tr> </thead> <tbody> <tr> <td>Scenario 1:</td> <td style="text-align: center;">-275</td> <td style="text-align: center;">-318</td> <td style="text-align: center;">-348</td> </tr> <tr> <td>Scenario 2:</td> <td style="text-align: center;">-608</td> <td style="text-align: center;">-702</td> <td style="text-align: center;">-772</td> </tr> <tr> <td>Scenario 3:</td> <td style="text-align: center;">-1,212</td> <td style="text-align: center;">-1,403</td> <td style="text-align: center;">-1,541</td> </tr> </tbody> </table> <p>Impact on local jail populations cannot be determined.</p> <p>FY 2012/13 represents the first full year of impact.</p>		<u>Year 1</u>	<u>Year 5</u>	<u>Year 10</u>	Scenario 1:	-275	-318	-348	Scenario 2:	-608	-702	-772	Scenario 3:	-1,212	-1,403	-1,541	<ul style="list-style-type: none"> <li>- Increases and decreases in revocation rates</li> <li>- Imposition of community, intermediate, and active punishments</li> <li>- Usage of specific sanctions</li> </ul>
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<p><b>Part II. Post-Release Supervision Changes</b></p> <ul style="list-style-type: none"> <li>- Extends period of PRS for Class B1-E felons from nine months to twelve months</li> <li>- Adds nine-month period of PRS to Class F-I felons</li> <li>- Effective December 1, 2011, and applies to offenses committed on or after that date</li> </ul>	<p>Additional prison beds would be needed as a result of the proposed changes to PRS and would depend on the PRS revocation rate (20% for Scenario 1, 22% for Scenario 2, 25% for Scenario 3).</p> <table border="0" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th></th> <th style="text-align: center;"><u>Year 1</u></th> <th style="text-align: center;"><u>Year 5</u></th> <th style="text-align: center;"><u>Year 10</u></th> </tr> </thead> <tbody> <tr> <td>Scenario 1:</td> <td style="text-align: center;">622</td> <td style="text-align: center;">653</td> <td style="text-align: center;">728</td> </tr> <tr> <td>Scenario 2:</td> <td style="text-align: center;">708</td> <td style="text-align: center;">747</td> <td style="text-align: center;">833</td> </tr> <tr> <td>Scenario 3:</td> <td style="text-align: center;">829</td> <td style="text-align: center;">885</td> <td style="text-align: center;">985</td> </tr> </tbody> </table> <p>The impact relating to the addition of PRS supervision for Class F-I felons will begin in FY 2012/13; the impact relating to PRS changes for Class B1-E felons will not occur until later in the projection period.</p>		<u>Year 1</u>	<u>Year 5</u>	<u>Year 10</u>	Scenario 1:	622	653	728	Scenario 2:	708	747	833	Scenario 3:	829	885	985	<ul style="list-style-type: none"> <li>- Distinction between PRS revocations for technical violations and revocations due to the commission of a new offense</li> <li>- Amount of increase in PRS revocation rate</li> <li>- The number of periods of imprisonment served for revocation of PRS</li> <li>- The total length of imprisonment served for revocation of PRS</li> <li>- Lag-time between release from prison onto PRS and revocation to prison</li> </ul>
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<sup>1</sup> See the full impact analysis prepared by the NC Sentencing and Policy Advisory Commission for details regarding the assumptions and other considerations used in determining the potential impact of this bill on the prison population and local jail populations. Available upon request.

<sup>2</sup> Impact projections are provided for each section of the bill. The impact projections for each section should not be added together due to interactions with other sections of the bill.

Provision	Impact	Considerations																																								
<p><b>Part III. Status Offense of Habitual Breaking and Entering</b></p> <ul style="list-style-type: none"> <li>- Creates Habitual Breaking and Entering Status Offense</li> <li>- Changes the punishment for an habitual felon from a Class C felony to a felony class that is four classes higher than the underlying felony for which the person was convicted</li> <li>- Effective December 1, 2011, and applies to offenses committed on or after that date</li> </ul>	<p><u>Habitual Breaking and Entering</u>  Additional prison beds would be needed and would depend on how many offenders are convicted of habitual breaking and entering (estimated) and the rate of active sentences (Scenario 1: active rates based on felony punishment chart; Scenario 2: all receive active sentence).</p> <table border="0" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th></th> <th style="text-align: center;"><u>Year 1</u></th> <th style="text-align: center;"><u>Year 5</u></th> <th style="text-align: center;"><u>Year 10</u></th> </tr> </thead> <tbody> <tr> <td>Scenario 1:</td> <td style="text-align: center;">213</td> <td style="text-align: center;">866</td> <td style="text-align: center;">972</td> </tr> <tr> <td>Scenario 2:</td> <td style="text-align: center;">317</td> <td style="text-align: center;">1,088</td> <td style="text-align: center;">1,223</td> </tr> </tbody> </table> <p><u>Habitual Felon</u>  The impact would depend on the rate of active sentences imposed (Scenario 1: active rates based on felony punishment chart; Scenario 2: all receive active sentence) and sentencing practices regarding the imposition of sentences within the sentencing ranges (Model A: midpoint of presumptive range; Model B: relative location of current sentencing range).</p> <table border="0" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th></th> <th style="text-align: center;"><u>Year 1</u></th> <th style="text-align: center;"><u>Year 5</u></th> <th style="text-align: center;"><u>Year 10</u></th> </tr> </thead> <tbody> <tr> <td>Scenario 1</td> <td></td> <td></td> <td></td> </tr> <tr> <td>  Model A:</td> <td style="text-align: center;">8</td> <td style="text-align: center;">-140</td> <td style="text-align: center;">64</td> </tr> <tr> <td>  Model B:</td> <td style="text-align: center;">11</td> <td style="text-align: center;">-308</td> <td style="text-align: center;">-628</td> </tr> <tr> <td>Scenario 2</td> <td></td> <td></td> <td></td> </tr> <tr> <td>  Model A:</td> <td style="text-align: center;">13</td> <td style="text-align: center;">-127</td> <td style="text-align: center;">78</td> </tr> <tr> <td>  Model B:</td> <td style="text-align: center;">16</td> <td style="text-align: center;">-296</td> <td style="text-align: center;">-615</td> </tr> </tbody> </table> <p>FY 2012/13 represents the first full year of implementation.</p>		<u>Year 1</u>	<u>Year 5</u>	<u>Year 10</u>	Scenario 1:	213	866	972	Scenario 2:	317	1,088	1,223		<u>Year 1</u>	<u>Year 5</u>	<u>Year 10</u>	Scenario 1				Model A:	8	-140	64	Model B:	11	-308	-628	Scenario 2				Model A:	13	-127	78	Model B:	16	-296	-615	<p><u>Habitual Breaking and Entering</u></p> <ul style="list-style-type: none"> <li>- How many offenders would qualify and be convicted of this status offense</li> <li>- Rate of active sentences</li> <li>- Plea negotiation practices</li> <li>- Post-release supervision required</li> </ul> <p><u>Habitual Felon</u></p> <ul style="list-style-type: none"> <li>- Rate of active sentences</li> <li>- Distribution of sentences within the mitigated, presumptive, and aggravated sentencing ranges</li> <li>- Plea negotiation practices</li> </ul>
	<u>Year 1</u>	<u>Year 5</u>	<u>Year 10</u>																																							
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Provision	Impact	Considerations																				
<p><b>Part IV. Limit Time/Certain Violations of Probation</b></p> <ul style="list-style-type: none"> <li>- Limits the time an offender may serve for a technical violation of probation</li> <li>- Effective December 1, 2011, and applies to probation violations on or after that date</li> </ul>	<p>Prison bed savings would result when the total time served through the ninety-day periods of confinement is less than the suspended sentence length and would depend on whether revocation rates would increase (Scenario 1: no change; Scenario 2: 5% increase; Scenario 3: 10% increase; Scenario 4: 20% increase).</p> <table border="1" data-bbox="716 488 1234 651"> <thead> <tr> <th></th> <th><u>Year 1</u></th> <th><u>Year 5</u></th> <th><u>Year 10</u></th> </tr> </thead> <tbody> <tr> <td>Scenario 1:</td> <td>-1,764</td> <td>-2,445</td> <td>-2,713</td> </tr> <tr> <td>Scenario 2:</td> <td>-1,590</td> <td>-2,254</td> <td>-2,500</td> </tr> <tr> <td>Scenario 3:</td> <td>-1,445</td> <td>-2,095</td> <td>-2,325</td> </tr> <tr> <td>Scenario 4:</td> <td>-1,130</td> <td>-1,749</td> <td>-1,942</td> </tr> </tbody> </table> <p>Impact would begin about 3 months after the effective date, although FY 2012/13 would represent the first full year of impact.</p>		<u>Year 1</u>	<u>Year 5</u>	<u>Year 10</u>	Scenario 1:	-1,764	-2,445	-2,713	Scenario 2:	-1,590	-2,254	-2,500	Scenario 3:	-1,445	-2,095	-2,325	Scenario 4:	-1,130	-1,749	-1,942	<ul style="list-style-type: none"> <li>- Distinction between revocations for technical violations and revocations due to the commission of a new offense</li> <li>- The number of periods of imprisonment served for revocation</li> <li>- The total length of imprisonment served for revocation</li> <li>- Lag-time between placement on probation and revocation to prison</li> <li>- Whether probation revocation rates would increase (i.e., whether more offenders would be revoked for the shorter period of time)</li> </ul>
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<p><b>Part V. Diversion Program/Felony Drug Possession</b></p> <ul style="list-style-type: none"> <li>- Expands the current conditional discharge program in G.S. 90-96</li> <li>- Authorizes early supervised release from prison upon completion of certain programs</li> <li>- Effective January 1, 2012, and applies to felony and misdemeanor offenders who enter a plea or are found guilty on or after that date</li> </ul>	<p><u>Drug Diversion Program</u> Potential to result in prison bed savings, dependent on the number of offenders who successfully complete the program and receive a discharge or dismissal. However, due to the lack of data, the impact cannot be determined.</p> <p><u>Advanced Supervised Release</u> Potential to result in prison bed savings. Each scenario is based on the assumption that a certain percentage of the eligible pool (10% under Scenario 1, 20% under Scenario 2, and 30% under Scenario 3) would complete the risk reduction incentives and be released at the ASR date.</p> <table border="1" data-bbox="716 1227 1234 1357"> <thead> <tr> <th></th> <th><u>Year 1</u></th> <th><u>Year 5</u></th> <th><u>Year 10</u></th> </tr> </thead> <tbody> <tr> <td>Scenario 1:</td> <td>-67</td> <td>-245</td> <td>-281</td> </tr> <tr> <td>Scenario 2:</td> <td>-148</td> <td>-482</td> <td>-564</td> </tr> <tr> <td>Scenario 3:</td> <td>-204</td> <td>-750</td> <td>-874</td> </tr> </tbody> </table> <p>FY 2012/13 represents the first full year of implementation.</p>		<u>Year 1</u>	<u>Year 5</u>	<u>Year 10</u>	Scenario 1:	-67	-245	-281	Scenario 2:	-148	-482	-564	Scenario 3:	-204	-750	-874	<p><u>Drug Diversion Program</u></p> <ul style="list-style-type: none"> <li>- How many offenders would participate in and successfully complete the drug diversion program</li> <li>- Availability of diversion and treatment programs</li> <li>- Plea negotiation practices</li> </ul> <p><u>Advanced Supervised Release</u></p> <ul style="list-style-type: none"> <li>- How many offenders in the eligible pool would, at the discretion of the court and without objection of the prosecutor, receive a sentence with risk reduction incentives</li> <li>- How many would complete the risk reduction incentives and be released at the ASR date</li> <li>- The amount of the sentence reduction</li> <li>- Plea negotiation practices</li> </ul>				
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Provision	Impact	Considerations
<p><b>Part VI. Refocus Criminal Justice Partnership Program</b></p> <ul style="list-style-type: none"> <li>- Repeals the State-County Criminal Justice Partnership Program</li> <li>- Enacts the Treatment for Effective Community Supervision Program</li> <li>- Effective July 1, 2011</li> </ul>	<p>It is not possible to project the impact of this proposal on the prison population. It is not known whether prison or jail bed savings would occur as a result of this change.</p>	<ul style="list-style-type: none"> <li>- Whether there would be reductions in probation revocations and/or recidivism</li> <li>- Adequate funding to provide statewide community-based resources and the effectiveness of the funded programs</li> </ul>
<p><b>Part VII. Misdemeanants to Serve Sentences in Jail</b></p> <ul style="list-style-type: none"> <li>- Moves most misdemeanor offenders sentenced to an active sentence from prison to jail</li> <li>- Effective July 1, 2011</li> </ul>	<p>It is estimated that removing all Structured Sentencing misdemeanants serving six months or less from the state prison system would result in prison bed savings of about 1,000 – 1,200 prison beds on an annual basis. However, this proposed change would result in the need for additional local jail beds.</p>	<ul style="list-style-type: none"> <li>- Credit for time served</li> </ul>