

# North Carolina Sheriffs' Association

Serving the Sheriffs and Citizens of North Carolina since 1922



Special Legislative Report

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## The Justice Reinvestment Act of 2011

In 2009, Governor Bev Perdue and a bipartisan group of state legislators and other leaders requested technical assistance from the Council of State Governments (CSG) Justice Center to develop a statewide plan to reduce spending on prisons in North Carolina, increase public safety and to more efficiently and effectively use the funding currently available.

### The Study

The North Carolina analysis done by the CSG Justice Center showed:

- Probation revocations account for more than fifty percent of admissions to prisons.
- Seventy-six percent of probation revocations requiring the defendant to return to prison did not involve the defendant being convicted of a new criminal offense.
- North Carolina spends approximately \$120 million annually to supervise probationers and spends an additional \$102 million annually to incarcerate prisoners who violate the conditions of their supervision.
- Probation officers do not have a method to swiftly, and with certainty, respond to minor violations of probation supervision conditions.
- Some defendants request active prison time instead of accepting a sentence involving probation because the time the defendant would spend in prison would be less than the time he or she would spend on probation.
- More than 85% of the people released from prison returned to the community unsupervised despite the fact that they had a higher re-arrest rate than people released from prison with supervision.
- Much of probation officers' time is concentrated on supervising misdemeanants and low-level felons who are less likely to re-offend than the people who are being released from prison with no supervision whatsoever.
- There are not enough mental health and drug treatment services for all of the defendants who need these services.
- Available mental health and drug treatment services are not targeted to those defendants who have the highest risk of re-offending or the highest need for these services.

### Legislative Action

As a result of the CSG Justice Center study and the recommendations provided in that study, House Bill 642, Justice Reinvestment Act, was introduced in the North Carolina General Assembly by a bipartisan group of Republicans and Democrats. The primary bill sponsor was Representative W. David Guice from Brevard in Transylvania County. Representative Guice has served in the General Assembly since being elected in 2008 and before that served as a member of the Transylvania County Board of

Commissioners from 2000 to 2008. Representative Guice is a retired chief probation/parole officer and currently serves as one of the co-chairs of the legislature's Appropriations Subcommittee on Justice and Public Safety which made him ideally suited to lead the effort to get House Bill 642 enacted into law. The bill was finally approved by the General Assembly on June 16<sup>th</sup> and signed into law by Governor Bev Perdue on June 23, 2011.

### **Strengthen Probation Supervision**

Under changes enacted by this law, when a person on probation is not complying with the terms of his or her probation, the assigned probation officer can require the probationer to serve a "quick dip" in the county jail of between two days and three days. This "quick dip" is designed to get the probationer's attention and to encourage compliance with the conditions of probation. This option can only be imposed by a probation officer upon approval from a Chief Probation Officer.

For any probationer who is not complying with the terms of the probationary sentence, the probationer can only receive a maximum of six days per month confinement under the "quick dip" provision. This provision can only be used for a maximum of three calendar months.

According to the CSG Justice Center, the use of these swift and certain sanctions in response to low-level probation violations serves to effectively change behavior of probationers and reduce the overall number of probation revocations.

The Department of Correction is required to use a "validated instrument" to assess each probationer to determine that probationer's risk of re-offending. Probationers must be categorized in a supervision level that is based on the probationer's risk of re-offending and supervision of each probationer will be designed accordingly.

### **Post-Release Supervision Expanded**

The new law will require post-release supervision of all inmates released from prison for a felony conviction except those sentenced for a Class A felony or a Class B1 felony offense and sentenced to life in prison without parole. This change was implemented because of the belief that many prisoners released from prison need guidance and supervision from a probation/parole officer in order to get re-established back in their home community, find a place to live, get a job, and not return to a life of crime which could get them re-arrested and re-incarcerated.

### **Habitual Breaking and Entering**

As the CSG Justice Center staff met with law enforcement officers and criminal justice professionals across North Carolina while conducting their study, they consistently heard from law enforcement officers and district attorneys about the pervasive problem with repeat breaking and entering offenders. In order to address that issue, the new law provides that someone who has committed his or her second felony breaking and entering (B & E) could be guilty of the status offense of felony habitual breaking and entering and be sentenced as a Class E felon.

### **Habitual Felon Law**

The existing habitual felon law provides that a person convicted as a habitual felon must be punished as a Class C felon. The changes provide that the defendant who is convicted as a habitual felon will be punished at a level that is four classes higher than the principal felony for which the person

was convicted. For most felonies and habitual felons they will continue to be sentenced as a Class C felon. However, habitual felons convicted of some of the lower-level felonies will have their sentences imposed at four levels higher than the principal felony for which they were convicted and the punishment may be less than a Class C felony punishment.

### **Certain Violations of Probation**

Previously, a person on probation who violated any condition of his or her probation could have the entire suspended sentence activated when probation was revoked. Under the new law, the court will only be allowed to revoke the offender's probation if the offender commits a new crime or absconds from supervision. For other types of violations, the court cannot fully revoke the offender's probation until it has first imposed two 90-day periods of imprisonment in response to prior violations by felons, or two periods of imprisonment of up to 90 days for violations by misdemeanants.

These provisions allow probation officers to, in a more serious manner than provided by the "quick dip" program, attempt to get the probationer's attention in hopes that the probationer will start complying with the conditions of probation to avoid activation of their full prison sentence. Similar to the "quick dips," the CSG Justice Center indicates that this type of sanction, when applied to low-level probation violations, serves to reduce probation revocations overall.

Another benefit of this provision is that it eliminates the incentive in current law for probationers to intentionally violate their probation conditions and try to get their probation revoked because they want to serve a short active prison term in lieu of serving a much longer period of time on probation under the supervision of a probation officer.

### **Drug Possession/Diversion Program**

This provision makes changes in the controlled substance diversion program, which is a program that provides for dismissal of criminal charges upon successful completion of probation that requires the defendant to obtain treatment for his or her drug problem.

This bill provides that all first-time drug possession offenders—felony and misdemeanor, regardless of the drug involved or the drug amount—are eligible for the program. In fact, if the drug possession offender has no prior offenses, the judge is required to enter the defendant into the program. This program is only available for defendants on their first offense for drug possession and is not available to offenders who: (1) are repeat offenders; (2) are involved in the sale or delivery or manufacture of controlled substances; or (3) have drug possession charges above the Class I felony level.

### **Criminal Justice Partnership Program**

This legislation repeals the previous Criminal Justice Partnership Program (CJPP) and replaces it with a program called "Treatment for Effective Community Supervision." The new program is designed to allow the Department of Correction to contract with local providers for substance abuse treatment services and other behavioral treatment programs for convicted defendants. In counties where the CJPP service providers were doing an excellent job, it is expected that the Department of Correction will contract with those same service providers. In counties where the service provider was not doing an outstanding job for the CJPP, those providers may not be utilized since, ultimately, contracts will be awarded on a competitive basis and judged according to outcome. The legislation eliminates the statutory requirement for local Criminal Justice Partnership Advisory Boards, which typically included

sheriffs and police chiefs. Now each county can decide for themselves whether or not to continue to utilize a Criminal Justice Partnership Advisory Board in their county.

### **Misdemeanants to Serve Sentences in Jail**

Currently, inmates sentenced to 90 days or less serve their sentence in the county jail at county expense. That procedure has not changed.

Also, it is current practice for most (but not all) defendants who are sentenced to over 180 days as a misdemeanor or sentenced for a felony to be assigned to serve their sentence in the Department of Correction's Division of Prisons. However, in some counties long-term misdemeanor sentences and felon sentences are being served by inmates in the county jail. Effective January 1, 2012, all defendants sentenced to over 180 days for a misdemeanor and those sentenced for a felony must serve their sentences in the state prison system and not the county jail.

Misdemeanants sentenced to 91-180 days will begin serving their sentence in county jails effective January 1, 2012. The North Carolina Sheriffs' Association has been designated to develop the Statewide Misdemeanant Confinement Program to enable the Department of Correction to contract with sheriffs who have vacant beds in their county jails. Pursuant to these contracts, 91-180 day misdemeanants will be housed in those county jails with available beds and the county will be reimbursed for doing so. The legislation is clear that only counties who wish to volunteer to house these inmates will be utilized, and no county will be forced to keep misdemeanants serving 91-180 day sentences.

For counties that agree to house 91-180 day misdemeanants, the Statewide Misdemeanant Confinement Fund will reimburse them for housing and related services. Money will be provided to the Fund for these purposes by two increases in court costs that became effective on August 1, 2011. Those increases include an \$18 increase in every district court criminal court cost and a \$50 court cost for those defendants charged with a Chapter 20 motor vehicle offense where they are ultimately convicted of or plead guilty to an improper equipment violation. These new funds will go into the Statewide Misdemeanant Confinement Fund managed by the Department of Correction.

The North Carolina Sheriffs' Association will be responsible for determining which counties have available bed capacity and securing contracts between those counties and the Department of Correction for those counties to house the 91-180 day misdemeanants. When the program is operational and a person is sentenced to a 91-180 day sentence, the sheriff's office in the county where the conviction occurred will notify the North Carolina Sheriffs' Association and the Association will assign that inmate to a particular county jail to serve the sentence.

The Statewide Misdemeanant Confinement Fund will reimburse counties for transportation costs related to the 91-180 day misdemeanants, for housing costs related to these prisoners and for out-of-jail medical expenses incurred on behalf of these prisoners.

Several details of the Statewide Misdemeanant Confinement Program were not specified in the legislation and will be negotiated by the North Carolina Sheriffs' Association and the Department of Correction. These details will be resolved in the contracts that will be signed by the Department of Correction and those sheriffs who agree to house 91-180 day misdemeanants in their county jails. One of the key issues to be resolved is the rate of compensation to counties that agree to house these inmates. The goal is to have the daily rate high enough to justify a decision by sheriffs to participate in the program, but not too high so we ensure that sufficient funding is available to pay the daily rate for all

inmates in the program.

In July, the North Carolina Sheriffs' Association invited all sheriffs and their staff to a meeting to discuss the issues that need to be addressed as this program is established. In August, the Sheriffs' Association began a survey of all county jails in North Carolina to determine their actual capacity and to identify those jails with sufficient capacity to participate in the program. In addition, changes must be made to the forms by the Administrative Office of the Courts that are used as the Commitment Orders so that judges can properly sentence these inmates to serve their period of incarceration pursuant to the Statewide Misdemeanant Confinement Program.

The North Carolina Sheriffs' Association anticipates that the program will be up and running so that several pilot counties can participate in November and December. The entire statewide system will be activated on January 1, 2012.

#### **Effective Dates**

Most of the changes to the probation and post-release supervision laws and procedures become effective December 1, 2011. The changes in sentencing related to the Statewide Misdemeanant Confinement Program become effective January 1, 2012.

Any prisoners sentenced prior to January 1, 2012 to the custody of the Department of Correction will serve out their entire sentence in the Department of Correction and will not be relocated to a county jail on or after January 1, 2012. Likewise, any prisoner sentenced before January 1 to serve their sentence in a county jail will not be relocated after January 1 to the Division of Prisons. All prisoners sentenced on or after January 1, 2012 will be assigned to the local jail, the Statewide Misdemeanant Confinement Program, or the Division of Prisons based on the requirements of the new law.

The North Carolina Sheriffs' Association is required to report on October 1, 2011 and periodically thereafter to the North Carolina General Assembly on the Statewide Misdemeanant Confinement Program. The North Carolina Sentencing and Policy Advisory Commission and the Department of Correction are required to jointly conduct ongoing evaluations regarding the implementation of The Justice Reinvestment Act of 2011 and to report at least annually by April 15th of each year to the North Carolina General Assembly.

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