

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 16

Short Title: Clarify Community-Based Corrections.

(Public)

Sponsors: Senators Ballance; Albertson, Cooper, Dannelly, Gulley, and Miller.

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE NORTH
3 CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION TO
4 MODIFY STATUTORY LANGUAGE DEFINING CERTAIN INTERMEDIATE
5 PUNISHMENTS, TO CHANGE THE JUDICIAL AUTHORITY TO DELEGATE
6 RESPONSIBILITIES TO PROBATION OFFICERS AND TO MODIFY THOSE
7 DELEGATED RESPONSIBILITIES, TO MODIFY THE TARGET POPULATION
8 FOR COMMUNITY PENALTIES, AND TO IDENTIFY THE POPULATION
9 INELIGIBLE FOR COMMUNITY SERVICE.

10 The General Assembly of North Carolina enacts:

11 Section 1. G.S. 143B-262(c) reads as rewritten:

12 "(c) The Department shall establish within the Division of Adult Probation and
13 Parole a program of Intensive ~~Probation and Parole Supervision~~. This program shall
14 provide intensive supervision for ~~probationers, probationers, post-release supervisees, and~~
15 parolees who require close supervision in order to remain in the community pursuant to a
16 community penalties plan, community work plan, community restitution plan, or other
17 plan of rehabilitation. The intensive ~~probation and parole supervision~~ program shall be
18 available to both felons and misdemeanants. Each offender shall be required to comply
19 with the rules adopted for the Program as well as the requirements specified in G.S. 15A-
20 1340.11(5)."

1 Section 2. G.S. 15A-1340.11(5) reads as rewritten:

2 "(5) Intensive probation. – Probation that requires the offender to submit to
3 supervision by officers assigned to the Intensive ~~Probation~~-Supervision
4 Program established pursuant to G.S. 143B-262(c), and to comply with
5 the rules adopted for that Program. Unless otherwise ordered by the
6 court, intensive supervision also requires multiple contacts by a
7 probation officer per week, a specific period each day during which the
8 offender must be at his or her residence, and that the offender remain
9 gainfully and suitably employed or faithfully pursue a course of study or
10 of vocational training that will equip the offender for suitable
11 employment."

12 Section 3. G.S. 15A-1343(b1)(3b) reads as rewritten:

13 "(3b) Submit to supervision by officers assigned to the Intensive Probation
14 Program established pursuant to G.S. 143B-262(c), and abide by the
15 rules adopted for that Program. Unless otherwise ordered by the
16 court, intensive supervision also requires multiple contacts by a
17 probation officer per week, a specific period each day during which
18 the offender must be at his or her residence, and that the offender
19 remain gainfully and suitably employed or faithfully pursue a course
20 of study or of vocational training that will equip the offender for
21 suitable employment."

22 Section 4. G.S. 15A-1340.11 reads as rewritten:

23 **"§ 15A-1340.11. Definitions.**

24 The following definitions apply in this Article:

- 25 (1) Active punishment. – A sentence in a criminal case that requires an
26 offender to serve a sentence of imprisonment and is not suspended.
27 Special probation, as defined in G.S. 15A-1351, is not an active
28 punishment.
- 29 (2) Community punishment. – A sentence in a criminal case that does
30 not include an active punishment or an intermediate punishment.
- 31 (3) Day-reporting center. – A facility to which offenders are required, as
32 a condition of probation, to report on a daily or other regular basis at
33 specified times for a specified length of time to participate in
34 activities such as counseling, treatment, social skills training, or
35 employment training.
- 36 (4) ~~Electronic monitoring. – A condition of probation in which the~~
37 ~~offender is required to remain in one or more specified places for a~~
38 ~~specified period or periods each day, and in which the offender shall~~
39 ~~wear a device which permits the supervising agency to monitor the~~
40 ~~offender's compliance with the condition electronically.~~
- 41 (4a) House arrest with electronic monitoring. – Probation in which the
42 offender is required to remain at his or her residence unless the court
43 or the probation officer authorizes the offender to leave for the

1 purpose of employment, counseling, a course of study or vocational
2 training. The offender shall be required to wear a device which
3 permits the supervising agency to monitor the offender's compliance
4 with the condition electronically.

5 (5) Intensive probation. – Probation that requires the offender to submit
6 to supervision by officers assigned to the Intensive Probation
7 Program established pursuant to G.S. 143B-262(c), and to comply
8 with the rules adopted for that Program.

9 (6) Intermediate punishment. – A sentence in a criminal case that places
10 an offender on supervised probation and includes at least one of the
11 following conditions:

- 12 a. Special probation as defined in G.S. 15A-1351(a).
13 b. Assignment to a residential program.
14 c. ~~Electronic monitoring.~~ House arrest with electronic monitoring.
15 d. Intensive probation.
16 e. Assignment to a day-reporting center.

17 In addition, a sentence to regular supervised probation imposed pursuant
18 to a community penalties plan as defined in G.S. 7A-771(2) is an
19 intermediate punishment, regardless of whether any of the above
20 conditions is imposed, if the plan is accepted by the court and the plan
21 does not include active punishment.

22 (7) Prior conviction. – A person has a prior conviction when, on the date a
23 criminal judgment is entered, the person being sentenced has been
24 previously convicted of a crime:

- 25 a. In the district court, and the person has not given notice of appeal
26 and the time for appeal has expired; or
27 b. In the superior court, regardless of whether the conviction is on
28 appeal to the appellate division; or
29 c. In the courts of the United States, another state, the armed
30 services of the United States, or another country, regardless of
31 whether the offense would be a crime if it occurred in North
32 Carolina,

33 regardless of whether the crime was committed before or after the
34 effective date of this Article.

35 (8) Residential program. – A program in which the offender, as a condition
36 of probation, is required to reside in a facility for a specified period and
37 to participate in activities such as counseling, treatment, social skills
38 training, or employment training, conducted at the residential facility or
39 at other specified locations."

40 Section 5. G.S. 15A-1343(b1) reads as rewritten:

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

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

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

29 Section 6. G.S. 15A-1343.2(f) reads as rewritten:

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

- 33 (1) Perform up to 50 hours of community service, and pay the fee
34 prescribed by law for this supervision;
- 35 (2) Submit to ~~electronic monitoring;~~ a curfew which requires the offender to
36 remain in a specified place for a specified period each day and wear a
37 device that permits the offender's compliance with the condition to be
38 monitored electronically;
- 39 (3) Submit to substance abuse monitoring or treatment; or
- 40 (4) Participate in an educational or vocational skills development program.

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

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

7 Section 7. G.S. 15A-1343.2 reads as rewritten:

8 **"§ 15A-1343.2. Special probation rules for persons sentenced under Article 81B.**

9 (a) Applicability. – This section applies only to persons sentenced under Article
10 81B of this Chapter.

11 (b) Purposes of Probation for Community and Intermediate Punishments. – The
12 Department of Correction shall develop a plan to handle offenders sentenced to
13 community and intermediate punishments. The probation program designed to handle
14 these offenders shall have the following principal purposes: to hold offenders accountable
15 for making restitution, to ensure compliance with the court's judgment, to effectively
16 rehabilitate offenders by directing them to specialized treatment or education programs,
17 and to protect the public safety.

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

23 (d) Lengths of Probation Terms Under Structured Sentencing. – Unless the court
24 makes specific findings that longer or shorter periods of probation are necessary, the
25 length of the original period of probation for offenders sentenced under Article 81B shall
26 be as follows:

- 27 (1) For misdemeanants sentenced to community punishment, not less than
28 six nor more than 18 months;
- 29 (2) For misdemeanants sentenced to intermediate punishment, not less than
30 12 nor more than 24 months;
- 31 (3) For felons sentenced to community punishment, not less than 12 nor
32 more than 30 months; and
- 33 (4) For felons sentenced to intermediate punishment, not less than 18 nor
34 more than 36 months.

35 If the court finds at the time of sentencing that a longer period of probation is
36 necessary, that period may not exceed a maximum of five years, as specified in G.S.
37 15A-1342 and G.S. 15A-1351.

38 Extension. – The court may with the consent of the offender extend the original
39 period of the probation if necessary to complete a program of restitution or to complete
40 medical or psychiatric treatment ordered as a condition of probation. This extension may
41 be for no more than three years, and may only be ordered in the last six months of the
42 original period of probation.

1 (e) Delegation to Probation Officer in Community Punishment. —~~The court may~~
2 ~~delegate to~~ Unless the presiding judge specifically finds in the judgment of the court that
3 delegation is not appropriate, the Division of Adult Probation and Parole in the
4 Department of Correction ~~the authority to~~ may require an offender sentenced to
5 community punishment to:

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

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

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

19 (f) Delegation to Probation Officer in Intermediate Punishments. —~~The court may~~
20 ~~delegate to~~ Unless the presiding judge specifically finds in the judgment of the court that
21 delegation is not appropriate, the Division of Adult Probation and Parole in the
22 Department of Correction ~~the authority to~~ may require an offender sentenced to
23 intermediate punishment to:

- 24 (1) Perform up to 50 hours of community service, and pay the fee
25 prescribed by law for this supervision;
- 26 (2) Submit to electronic monitoring;
- 27 (3) Submit to substance abuse assessment, monitoring or treatment; or
- 28 (4) Participate in an educational or vocational skills development program.

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

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

37 (g) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 19, s. 3.

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

40 Section 8. G.S. 7A-771(5) reads as rewritten:

41 "(5) 'Targeted offenders' means persons charged with or convicted of
42 misdemeanors or felonies who are eligible to receive an intermediate

1 punishment based on their class of offense and prior record level and
2 who are facing an imminent and substantial threat of imprisonment."

3 Section 9. G.S. 15A-1368.4 is amended by adding a new subsection to read:

4 "(e1) Prohibited Conditions. – The Commission shall not impose community service
5 as a condition of post-release supervision."

6 Section 10. This act becomes effective December 1, 1997, and applies to
7 offenses committed on or after that date.