

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 212

Short Title: Clarify Community-Based Corrections.

(Public)

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Sponsors: Representatives Brawley; and Sexton.

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Referred to: Judiciary II.

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February 17, 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 reads as rewritten:

2 **"§ 15A-1340.11. Definitions.**

3 The following definitions apply in this Article:

- 4 (1) Active punishment. – A sentence in a criminal case that requires an  
5 offender to serve a sentence of imprisonment and is not suspended.  
6 Special probation, as defined in G.S. 15A-1351, is not an active  
7 punishment.
- 8 (2) Community punishment. – A sentence in a criminal case that does not  
9 include an active punishment or an intermediate punishment.
- 10 (3) Day-reporting center. – A facility to which offenders are required, as a  
11 condition of probation, to report on a daily or other regular basis at  
12 specified times for a specified length of time to participate in activities  
13 such as counseling, treatment, social skills training, or employment  
14 training.
- 15 (4) ~~Electronic monitoring. – A condition of probation in which the offender~~  
16 ~~is required to remain in one or more specified places for a specified~~  
17 ~~period or periods each day, and in which the offender shall wear a~~  
18 ~~device which permits the supervising agency to monitor the offender's~~  
19 ~~compliance with the condition electronically.~~
- 20 (4a) House arrest with electronic monitoring. – Probation in which the  
21 offender is required to remain at his or her residence unless the court or  
22 the probation officer authorizes the offender to leave for the purpose of  
23 employment, counseling, a course of study, or vocational training. The  
24 offender shall be required to wear a device which permits the  
25 supervising agency to monitor the offender's compliance with the  
26 condition electronically.
- 27 (5) Intensive probation. – Probation that requires the offender to submit to  
28 supervision by officers assigned to the Intensive ~~Probation-Supervision~~  
29 Program established pursuant to G.S. 143B-262(c), and to comply with  
30 the rules adopted for that Program. Unless otherwise ordered by the  
31 court, intensive supervision also requires multiple contacts by a  
32 probation officer per week, a specific period each day during which the  
33 offender must be at his or her residence, and that the offender remain  
34 gainfully and suitably employed or faithfully pursue a course of study or  
35 of vocational training that will equip the offender for suitable  
36 employment.
- 37 (6) Intermediate punishment. – A sentence in a criminal case that places an  
38 offender on supervised probation and includes at least one of the  
39 following conditions:
- 40 a. Special probation as defined in G.S. 15A-1351(a).  
41 b. Assignment to a residential program.  
42 c. ~~Electronic monitoring.~~ House arrest with electronic monitoring.  
43 d. Intensive probation.

1 e. Assignment to a day-reporting center.

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

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

10 a. In the district court, and the person has not given notice of appeal  
11 and the time for appeal has expired; or

12 b. In the superior court, regardless of whether the conviction is on  
13 appeal to the appellate division; or

14 c. In the courts of the United States, another state, the armed  
15 services of the United States, or another country, regardless of  
16 whether the offense would be a crime if it occurred in North  
17 Carolina,

18 regardless of whether the crime was committed before or after the  
19 effective date of this Article.

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

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

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

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

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

34 (2a) Submit to a period of imprisonment in a facility for youthful offenders  
35 for a minimum of 90 days or a maximum of 120 days under special  
36 probation, reference G.S. 15A-1351(a) or G.S. 15A-1344(e), and abide  
37 by all rules and regulations as provided in conjunction with the  
38 Intensive Motivational Program of Alternative Correctional Treatment  
39 (IMPACT), which provides an atmosphere for learning personal  
40 confidence, personal responsibility, self-respect, and respect for  
41 attitudes and value systems.

42 (3) Submit to imprisonment required for special probation under G.S. 15A-  
43 1351(a) or G.S. 15A-1344(e).

- 1           (3a) ~~Remain in one or more specified places for a specified period or periods~~  
2           ~~each day, and wear a device that permits the defendant's compliance~~  
3           ~~with the condition to be monitored electronically.~~
- 4           (3b) Submit to supervision by officers assigned to the Intensive Probation  
5           Program established pursuant to G.S. 143B-262(c), and abide by the  
6           rules adopted for that Program. Unless otherwise ordered by the court,  
7           intensive supervision also requires multiple contacts by a probation  
8           officer per week, a specific period each day during which the offender  
9           must be at his or her residence, and that the offender remain gainfully  
10           and suitably employed or faithfully pursue a course of study or of  
11           vocational training that will equip the offender for suitable employment.
- 12           (3c) Remain at his or her residence unless the court or the probation officer  
13           authorizes the offender to leave for the purpose of employment,  
14           counseling, a course of study, or vocational training. The offender shall  
15           be required to wear a device which permits the supervising agency to  
16           monitor the offender's compliance with the condition electronically.
- 17           (4) Surrender his driver's license to the clerk of superior court, and not  
18           operate a motor vehicle for a period specified by the court.
- 19           (5) Compensate the Department of Environment, Health, and Natural  
20           Resources or the North Carolina Wildlife Resources Commission, as the  
21           case may be, for the replacement costs of any marine and estuarine  
22           resources or any wildlife resources which were taken, injured, removed,  
23           harmfully altered, damaged or destroyed as a result of a criminal offense  
24           of which the defendant was convicted. If any investigation is required  
25           by officers or agents of the Department of Environment, Health, and  
26           Natural Resources or the Wildlife Resources Commission in  
27           determining the extent of the destruction of resources involved, the  
28           court may include compensation of the agency for investigative costs as  
29           a condition of probation. This subdivision does not apply in any case  
30           governed by G.S. 143-215.3(a)(7).
- 31           (6) Perform community or reparation service and pay any fee required by  
32           law or ordered by the court for participation in the community or  
33           reparation service program.
- 34           (7) Submit at reasonable times to warrantless searches by a probation  
35           officer of his person and of his vehicle and premises while he is present,  
36           for purposes specified by the court and reasonably related to his  
37           probation supervision, but the probationer may not be required to  
38           submit to any other search that would otherwise be unlawful. Whenever  
39           the warrantless search consists of testing for the presence of illegal  
40           drugs, the probationer may also be required to reimburse the  
41           Department of Correction for the actual cost of drug screening and drug  
42           testing, if the results are positive.

- 1 (8) Not use, possess, or control any illegal drug or controlled substance  
2 unless it has been prescribed for him by a licensed physician and is in  
3 the original container with the prescription number affixed on it; not  
4 knowingly associate with any known or previously convicted users,  
5 possessors or sellers of any such illegal drugs or controlled substances;  
6 and not knowingly be present at or frequent any place where such illegal  
7 drugs or controlled substances are sold, kept, or used.
- 8 (8a) Purchase the least expensive annual statewide license or combination of  
9 licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-  
10 270.5, 113-271, 113-272, and 113-272.2 that would be required to  
11 engage lawfully in the specific activity or activities in which the  
12 defendant was engaged and which constitute the basis of the offense or  
13 offenses of which he was convicted.
- 14 (9) If the offense is one in which there is evidence of physical, mental or  
15 sexual abuse of a minor, the court should encourage the minor and the  
16 minor's parents or custodians to participate in rehabilitative treatment  
17 and may order the defendant to pay the cost of such treatment.
- 18 (10) Satisfy any other conditions determined by the court to be reasonably  
19 related to his rehabilitation."

20 Section 4. G.S. 15A-1343.2 reads as rewritten:

21 **"§ 15A-1343.2. Special probation rules for persons sentenced under Article 81B.**

22 (a) Applicability. – This section applies only to persons sentenced under Article  
23 81B of this Chapter.

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

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

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

- 40 (1) For misdemeanants sentenced to community punishment, not less than  
41 six nor more than 18 months;
- 42 (2) For misdemeanants sentenced to intermediate punishment, not less than  
43 12 nor more than 24 months;

1 (3) For felons sentenced to community punishment, not less than 12 nor  
2 more than 30 months; and

3 (4) For felons sentenced to intermediate punishment, not less than 18 nor  
4 more than 36 months.

5 If the court finds at the time of sentencing that a longer period of probation is  
6 necessary, that period may not exceed a maximum of five years, as specified in G.S.  
7 15A-1342 and G.S. 15A-1351.

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

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

18 (1) Perform up to 20 hours of community service, and pay the fee  
19 prescribed by law for this supervision;

20 (2) Report to the offender's probation officer on a frequency to be  
21 determined by the officer; or

22 (3) Submit to substance abuse assessment, monitoring or treatment.

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

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

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

36 (1) Perform up to 50 hours of community service, and pay the fee  
37 prescribed by law for this supervision;

38 (2) Submit to ~~electronic monitoring;~~ a curfew which requires the offender to  
39 remain in a specified place for a specified period each day, and wear a  
40 device that permits the offender's compliance with the condition to be  
41 monitored electronically;

42 (3) Submit to substance abuse assessment, monitoring or treatment; or

43 (4) Participate in an educational or vocational skills development program.

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

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

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

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

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

13 "(5) 'Targeted offenders' means persons charged with or convicted of  
14 misdemeanors or felonies who are eligible to receive an intermediate  
15 punishment based on their class of offense and prior record level and  
16 who are facing an imminent and substantial threat of imprisonment."

17 Section 6. G.S. 15A-1368.4 is amended by adding a new subsection to read:

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

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